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SUPREME COURT, U. S.

No. 15840

United States
Court of Appeals
for the Ninth Circuit

STATE OF CALIFORNIA; UNITED STATES OF AMERICA, et al., Appellants,

vs.

EVERETT G. RANK, et al., Appellees.

Transcript of Record

In Six Volumes
VOLUME II.
(Pages 381 to 858, inclusive)

Appeals from the United States District Court for the Southern District of California, Northern Division

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO SUBSTITUTE PARTY DEFENDANT AND DEFENDANT IN INTERVENTION

There having been filed in the above entitled Court on or about the 10th day of November, 1953, notices of and motions to substitute Edwin F. Sullivan as a defendant in the above entitled action, as a defendant in intervention under the complaint in intervention of the City of Fresno, a municipal corporation, on file herein, and as a defendant in intervention under the complaint in intervention of Tranquillity Irrigation District, a public corporation, on file herein, both individually and as Operations Supervisor, Fresno Office of the United States Bureau of Reclamation, in place of Jack Rodner, individually and as Fresno District Manager of the United States Bureau of [1800] Reclamation, as a defendant in the above entitled action and as a defendant in intervention under the complaint in intervention of the City of Fresno and as a defendant in intervention under the complaint in intervention of Tranquillity Irrigation District, a public corporation, and the matter after continuance in open court having come on regularly for hearing on the 23rd day of November, 1953, and the Court having considered the pleadings filed herein and all other pleadings, proposed pleadings, affidavits and matters on file in the above entitled action and under the said complaints in intervention of said City of Fresno and of said Tranquillity Irrigation District

and the matters in connection therewith, and having heard and considered arguments of counsel:

And it appearing to the court: that due, lawful and reasonable notice of said motions have been given to all counsel of record and to said Edwin F. Sullivan, individually and personally, and as Operations Supervisor, Fresno Operations Office of the Bureau of Reclamation of the United States; that the said Jack Rodner resigned as Fresno District Manager of the United States Bureau of Reclamation on or about the 6th day of November, 1953 and that the said Edwin F. Sullivan was on or about the 7th day of November, 1953 appointed and assumed the office of Operations Supervisor, Fresno Operations Office of the United States Bureau of Reclamation and is the successor in office of the said Jack Rodner, effective as of the close of business November 6, 1953; and that the said Edwin F. Sullivan as Operations Supervisor, Fresno Operations Office, was appointed with power to exercise substantially all of the authority theretofore vested in the said Jack Rodner as Fresno District Manager of the United States Bureau of Reclamation, with the exception of the operation in general of the Delta-Mendota Canal, as evidenced by the proposed amendments to the above entitled Complaint and said before [1801] mentioned complaints in intervention, affidavits and all other pleadings on file in the above entitled action and on file under the con plaints in intervention of the City of Fresno and of said Tranquillity Irrigation District and as evidenced by Paragraph 2 of that certain order of

the United States Bureau of Reclamation by Paragraph 2 of Order No. 2725 of the Department of the Interior of the United States, reading as follows:

> "Sec. 2. Subordinate officials. Subordinate officials of Region 2, Bureau of Reclamation will continue to exercise the authority theretofore vested in them until such time as the Supervising Engineer may withdraw such authority."

and it appearing that the said Edwin F. Sullivan as Operations Supervisor, Fresno Operations Office of the Bureau of Reclamation of the United States has substantially the same duties, powers and responsibilities over the operation of Friant Dam, discharges down the San Joaquin River, the control of the flow of the San Joaquin River between Friant Dam and up to and including Mendota Pool, the Friant-Kern Canal, the Friant-Madera Canal and the other authority and power of the said Jack Rodner with the exception of the operation of the Delta-Mendota Canal of the Central Valley Project, the United States Bureau of Reclamation in California.

And it further appearing that the motion for substitution was timely made; that there is substantial need for continuing and maintaining within action and complaints in intervention of the said City of Fresno and said Tranquillity Irrigation District, that by supplemental pleadings and proposed

amendments duly filed and from the affidavits on file under the original complaint and cross complaints on file herein, that the said Edwin F. Sullivan adopts and continues and threatens to adopt and to continue the action of his predecessor in office the said Jack Rodner as Fresno District Manager of the United States Bureau of Reclamation in enforcing laws averred in the complaint on file herein and in the amendments thereto and in the complaint [1802] in intervention of said Tranquillity Irrigation District and amendments thereto and in the complaint in intervention of said City of Fresno and amendments thereto to be in violation of the Constitution of the United States in the impounding, taking, regulating, preventing the flow of and alleged wasting of the waters of the San Joaquin River in the manner, methods and times which are averred in said complaint, said complaint in intervention of the said City of Fresno, said complaint in intervention of said Tranquillity Irrigation District and all amendments thereto and to be in violation of the laws and statutes of the United States and in excess of the powers and duties of said Jack Rodner, as Fresno District Manager of the United States Bureau of Reclamation.

Now, Therefore, It Is Ordered, Adjudged and Decreed that the motion to amend the above entitled complaint and the complaint in intervention of the City of Fresno and the complaint in intervention of Tranquillity Irrigation District is hereby granted.

It Is Further Ordered, Adjudged and Decreed that the motions to substitute Edwin F. Sullivan as a defendant in the above entitled action, as a defendant in intervention under the complaint in intervention of the City of Fresno, and as a defendant in intervention under the complaint in intervention of Tranquillity Irrigation District, both individually and as Operations Supervisor, Fresno Operations Office of the United States Bureau of Reclamation, in place and instead of Jack Rodner, individually, and as Fresno District Manager of the United States Bureau of Reclamation, are hereby granted and the said Edwin F. Sullivan is hereby substituted individually and as Operations Supervisor, Fresno Operations Office of the United States Bureau of Reclamation in place and instead of Jack Rodner, individually and as Fresno District Manager of the United States Bureau of Reclamation, without prejudice in the [1803] proceedings already had in the within action and said complaints in intervention and that the said Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office of the United States Bureau of Reclamation appear and answer the above entitled complaint in intervention of the City of Fresno and the amendments and supplements thereto and the complaint in intervention and amendments and supplements thereto of said Tranquillity Irrigation District, said amendments to include the amendment herein or all amendments allowed to be filed by this said order, within 60 days after service upon him of a copy of this order.

Dated at Los Angeles, California this 3rd day of December, 1953.

/s/ PEIRSON M. HALL,
Judge of the United States District Court. [1804]

[Endorsed]: Filed December 3, 1953.

[Title of District Court and Cause.]

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

(United States of America) [1813]

Comes now the United States of America, acting by and through J. Lee Rankin, Assistant Attorney General, and Laughlin E. Waters, United States Attorney for the Southern District of California, pursuant to the authority of the Attorney General of the United States of America, appearing specially for the purpose of objecting to the jurisdiction of this Honorable Court as to the United States of America, and for no other purpose, and moves this Court to dismiss this cause as against the United States of America for want of [1814] jurisdiction over it and upon the following grounds and for the following reasons:

1. The complaint, as amended, and the complaints in intervention of the several parties abovenamed, fail to state claims against the United States of America for which relief may be granted.

2. The parties have a plain, adequate and complete remedy at law, thus precluding an action of

this character for injunction and plaintiffs have availed themselves already of their legal remedy against the United States of America.

3. Under the laws of the State of California, injunctive relief is not available to the plaintiffs or complainants in intervention.

4. The Judicial branch of the Government of the United States of America will not entertain an action of the character here involved which will result in the invasion or usurpation of the powers of the Executive and Legislative branches of the Government of the United States of America.

5. This is not a class action as alleged and plaintiffs do not adequately represent the alleged class in accordance with the requirements of the Federal Rules of Civil Procedure.

6. The United States of America has not waived its sovereign immunity from suit for injunctive relief and has not waived its immunity from suit under the facts which prevail in the above-entitled cause.

Wherefore, the United States of America prays that the cause be dismissed against it for the reasons expressed above and in accordance with the accompanying memorandum in support of this motion to dismiss.

Dated: Dec. 14, 1953.

UNITED STATES OF AMERICA,
/s/ J. LEE RANKIN,
Assistant Attorney General,
/s/ LAUGHLIN E. WATERS,
United States Attorney. [1815]

Memorandum in Support of Motion to Dismiss
Factual Statement

Seeking compensation for the "taking" of their rights to the use of water in the San Joaquin River, the plaintiffs instituted actions in this Court against the United States of America.[1]

To be observed is this fact:

The lands described in the petitions filed by the plaintiffs pursuant to the Tucker Act are described in Exhibit A of the complaint in this action.

Thus the plaintiffs here seek injunctive relief in connection with the same rights to the use of water for which they seek compensation. [1816]

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[1] Name: Everett G. Rank and Evelyn Lydia Rank. Date action filed pursuant to Tucker Act and Civil No.: October 17, 1947, No. 676-ND. Amount: $9,500.00. Property described in Exhibit A of complaint in this case: Page 1, Parcel II.

Evelyn Lydia Rank. October 17, 1947, No. 670-ND. $5,000.00 and costs. Page 1, Parcel III.

Duane Folsom, Bertha Folsom, E. Florence Folsom. October 18, 1947, No. 679-ND. $9,800.00. Page 1, Parcel I.

J. E. Cobb. October 17, 1947, No. 673-ND. $9,800.00 and costs. Page 2, Parcel V.

J. E. Cobb and Ruby Cobb. October 17, 1947, No. 674-ND. $9,500.00. Page 3, Parcel VII.

Lawrence D. Cobb. October 17, 1947, No. 675-ND. $9,800.00 and costs. Page 2, Parcel VI.

Marjorie E. Sims, October 17, 1947, No. 672-ND. $9,500.00. Page 3, Parcel VIII.

L. L. Howard, Alma Howard. October 17, 1947, No. 671-ND. $9,800.00. Page 4, Parcel IX.

Amelia Ann Holland. October 18, 1947, No. 678-ND. $9,500.00 and costs. Page 5, Parcel X.

In their petitions to this Court seeking compensation for the alleged "taking," plaintiffs aver that the United States of America, acting through the Bureau of Reclamation, "constructed a [Friant] dam across the San Joaquin River * * * upstream from the lands of Plaintiffs and began to and is continuing to make seasonal and cyclic storage of the waters of said San Joaquin River, and began to divert, and is continuing to divert, part of the annual flow of said San Joaquin River which Plaintiffs were and are entitled to, * * *."[2]

It is likewise alleged by plaintiffs that the storage and diversion of part of the waters of the San Joaquin River by the United States of America "constituted a taking by Defendant [United States of America] of part of the rights of Plaintiffs in and to the waters of said San Joaquin River appurtenant to Plaintiffs' lands, and in and to said underground and percolating waters underlying the said lands of Plaintiffs, which Defendant [United States of America] then and there, both impliedly and expressly, promised to pay Plaintiffs a reasonable compensation therefor."[3] Continuing, it is averred by plaintiffs that the "taking of said rights of Plaintiffs in and to the waters of said San Joaquin River has damaged Plaintiffs and reduced the reasonable market value of Plaintiffs' lands hereinabove described," in the amounts specified in the petitions.

[2] Civil No. 676-ND, page 6, paragraph IV. The other petitions use similar language.

[3] Civil No. 676-ND, page 6, paragraph IV.

Pertinent in regard to plaintiffs' actions against the United States of America for compensation for the "taking" of the rights to the use of water are those commonly known as the "Gerlach Cases."[1] There, as here, riparian owners sought to be paid the value of their rights to the use of water in the San Joaquin River by reason of the alleged taking by the United States through the construction of Friant Dam. Petitioners there were granted reimbursement for the value of their rights to the use of water. In that connection reference [1817] is made to these comments by the Court of Claims in making the award: "In the case at bar there can be no doubt that the defendant [United States of America] intended to deprive plaintiffs of whatever water rights they had in their lands. This is evidenced by a number of things. [1] The construction of the [Friant] dam, which would result in the deprivation of plaintiffs' rights, had been begun on November 3, 1939, a considerable time prior to October 20, 1941. * * *

"* * * defendant [United States of America] had paid for many of the rights they intended to take. * * * There can be no doubt on the record that defendant's [United States of America's] intention to take plaintiffs' rights had been clearly demonstrated and that it was in the process of carrying out that intention. * * *

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[1] Gerlach Livestock Company v. United States, and related cases, 76 F. Supp. 87, Court of Claims April 5, 1948; affirmed United States v. Gerlach Live Stock Company, 339 U. S. 725 (1949), decided June 5, 1950.

"We hold that the taking of plaintiff's water rights occurred not later than October 20, 1941." [5] To be observed it the fact that the plaintiffs here filed their complaints for compensation in this court on October 17 and 18, 1947. Thus they were able to allege "that within six (6) years last past, Defendant" constructed Friant Dam. Had they delayed longer, their claims against the United States of America would have ben barred for the law prescribes that "Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." [6]

Especially relevant is the fact that the plaintiffs initiated their legal actions for reimbursement for the alleged taking of their rights to the use of water subsequent to the initiation of their injunctive action. That proceeding against four subordinate officials of the Bureau of Reclamation [7] was ini-

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[5] Gerlach Livestock Co. v. United States, 76 F. Supp. 87, 97, 98.

[6] 28 U. S. C. 2401.

[7] Rank, et al., v. Julius A. Krug, Secretary of the Interior, et al., 90 F. Supp. 773 (U.S.D.C.S.D. Cal., 1950); Richard Boke, formerly Regional Director for the Bureau of Reclamation at Sacramento, California; Martin Blote, Regional Watermaster; Jack Rodner, District Manager; and R. K. Durant, Construction Engineer and Resident Engineer. Since the institution of the suit Clyde Spencer, Supervising Engineer of the California Office of the Bureau of Reclamation has been substituted for Richard Boke; Edwin F. Sullivan has been substituted for Jack Rodner.

tiated on September 25, 1947, in the State court. Subsequently, on October 6, 1947, the action was removed to this Court where it is presently pending.

Recognition that this injunctive proceeding was solely against the four subordinate officials of the United States of America is succinctly stated in these terms by this Court in its opinion:

> "Service of process in this case was not made or attempted upon [Secretary] Krug * * *."[8]

In that same opinion it is declared:

> "* * * neither the United States nor the Secretary of the Interior are indispensable parties, and this is not a suit against the United States."[9]

There is complete agreement with that conclusion for it is charged in the complaint as amended that the subordinate officials of the Bureau of Reclamation are engaged "illegally, unlawfully without right and acting in excess of the authority of their respective offices and employment and in excess of their authority conferred upon them by the Constitution and laws of the United States of America, in constructing a [Friant] dam across said San Joaquin River near Friant, California, about eight miles upstream from the lands of the plaintiffs * * *." Those subordinate officials of the Bureau of Reclamation, it is further charged in the complaint, "will unless restrained by the order of the above entitled court illegally, unlawfully, without right

[8] 90 F. Supp. 773, 780.
[9] 90 F. Supp. 773, 802.

and in excess of their authority as aforesaid, impound and store the waters of said San Joaquin River from one season to another and from wet to dry seasons and from dry to wet seasons and make other cyclic storage and threaten to, intend to and will unless restrained by the order of the above entitled court illegally and unlawfully divert the entire flow of said San Joaquin River from points on said River at said Friant Dam now being constructed across said River as aforesaid and illegally, unlawfully and without authority as aforesaid transport all of the waters which in the course of nature flow down said San Joaquin River from the natural channel and River bed of said San Joaquin River, and from the lands of plaintiffs." [1819]

Continuing, it is asserted in the complaint against the subordinate officials of the Bureau of Reclamation that all of the waters "are now needed and will be required for reasonable prospective recognized uses."[10] Likewise charging the subordinate officials of the Bureau of Reclamation, it is alleged in the complaint that those defendants are without right to impound and store the waters at Friant Dam, declaring that their acts are "illegal" and "unlawful" and "in excess of the authority of said defendants."[11] Plaintiffs pray that the defendants, subordinate officials of the Bureau of Reclamation, "be forever enjoined from impounding and storing of the San Joaquin River waters behind Friant Dam.

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[10] Complaint, paragraph IV, page 10 lines 13-19, line 26, page 10, lines 2-7, page 11.

[11] Complaint, page 17.

* * * That defendants be forever enjoined from diverting and transporting said waters of said San Joaquin River away to lands not riparian to said San Joaquin * * *. * * * That in event the * * * court refuses the first two prayers * * * that [it] make a physical solution of rights and claims of plaintiffs * * *. That in event the * * * court refuses the first three prayers * * * that the above entitled court take steps, proceed and make its order in inverse condemnation * * *. * * * That all contracts heretofore entered into by any of the defendants purporting to sell or carry away or distribute any of the waters of said San Joaquin River in violation of the rights of plaintiffs * * * be declared null and void * * *." [12]

Several amendments to the complaint against the subordinate officials of the Bureau of Reclamation were made. They assert, among other things, that "plaintiffs are representing by virtue of this action * * * approximately 125 other ranchers whose lands total approximately 47,500 acres * * * none of whom have filed suits under the Tucker Act * * *." [13]

By a complaint in intervention the City of Fresno, a municipal corporation, sought relief against the defendants, subordinate officials of the [1820] Bureau of Reclamation, and prayed as follows:

"1. That defendants be forever enjoined from impounding and storing of the San Joaquin River

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[12] Complaint, prayer pages 27, 28-29.

[13] Amendments dated September 15, 1949, September 29, 1949.

waters behind Friant Dam and from making seasonal or cyclic storage of said waters behind Friant Dam and cyclic release of said waters from said Friant Dam.

"2. That defendants be forever enjoined from diverting and transporting said waters of said San Joaquin River away to lands not riparian to said San Joaquin River, to lands, the owners of which have no riparian, prescriptive, appropriative or other rights to the waters of said San Joaquin River and to lands lying without the watershed of said San Joaquin River and from selling or entering into contracts for the sale of the waters of said San Joaquin River.

"3. That in event the above entitled court refuses the first two (2) prayers hereinabove set forth, and only in such event, then, in lieu thereof, that the above entitled court make a physical solution of rights and claims of City of Fresno and other parties hereto in and to the waters of said San Joaquin River as the term 'physical solution' is used in the decisions of the Supreme Court of California."[14]

Similarly, by a complaint in intervention the Tranquillity Irrigation District, together with other named interveners, for themselves and other landowners in the Tranquillity Irrigation District, proceeded against the defendant subordinate officials of the Bureau of Reclamation.[15] Their prayer for

[14] Complaint in Intervention, dated January 3, 1952, pages 15 and 16.

[15] Complaint in Intervention, dated January 3, 1951.

relief against those defendants was similar to that of the City of Fresno.

Emil Schramm, like the other plaintiffs and complainants in intervention, seeks injunctive relief against the defendants, subordinate officials of the [1821] Bureau of Reclamation. That intervener likewise prays for a physical solution if the injunctive relief sought is not granted. Moreover, complainant prays the court that, in the event it does not grant either the injunctive relief or the relief in the form of physical solution, it enter an order in inverse condemnation.[16]

The trial of the issues against the subordinates of the Bureau of Reclamation, Department of the Interior, to which reference has been made, was begun on January 29, 1952. That trial continued in excess of two hundred days. On June 12, 1953, this Court concluded taking evidence in the proceeding. As declared by the United States Court of Appeals for the Ninth Circuit in its opinion of August 4, 1953, in regard to this case:

> "The evidence is all in and the case awaits only argument and incidental rulings before it stands submitted for decision."[17]

Under those circumstances that Court likewise declared:

> "* * * the United States is not a party to the action, and no judgment in the case can be

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[16] Complaint in intervention, January 7, 1952.

[17] United States v. United States District Court in and for Southern District of California, Northern Division, et al., 206 F.2d 303, 307 (C.A. 9, 1953).

> entered against it, and no judgment that may be entered in the case can be res judicata as to the United States."[18]

On June 12, 1953, the day the trial of this case was concluded, a notice of motion to join the United States of America was filed by plaintiffs and complainants in intervention. By an order dated September 18, 1953, this Court ordered that the United States of America be joined in this proceeding as a party defendant.

There are motions pending to reopen this case to take further evidence:

> "* * * said evidence having occurred since the close of the above-entitled trial and having been discovered after the close of the above-entitled trial."[19] [1822]

In the light of the fact that the trial lasted over two hundred days; that the evidence is allegedly newly discovered, it is necessarily concluded that it is very limited in its scope.

Predicated on the factual review set forth above, the authorities supporting this motion to dismiss will be reviewed. That consideration will be first directed to the claims of all parties for injunctive relief; plaintiffs' claims for compensation; plaintiffs' alleged status as representatives of a class; the claims for injunctive relief of the complainants in intervention; and the fact that the United States

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[18] 206 F.2d 303, 307 (C.A. 9, 1953).

[19] Notice of Motion to Reopen dated 5th day of October, 1953.

of America, under the circumstances which prevail, has not waived its sovereign immunity from suit.

Assuming This Court Has Jurisdiction in This Proceeding Over the United States of America, Which Is Denied, the Plaintiffs and Complainants in Intervention Fail to State a Claim Against the United States of America Upon Which Relief May Be Granted.

By the Federal Rules of Civil Procedure it is provided that: "There shall be a complaint.[20]

"* * * [That] pleading * * * shall contain * * * a short and plain statement of the claim showing that the pleader is entitled to relief, and * * * a demand for judgment for the relief to which he deems himself entitled."[21] Few principles of the law are more fundamental than those which relate to the elements necessary to constitute a claim on behalf of a plaintiff against a defendant. Those elements are "the existence of a legal right in the plaintiff, with a corresponding legal duty in the defendant, and a violation * * * of that right * * * with consequential injury * * * to the plaintiff, for which he may maintain an action for * * * appropriate relief."[22]

Those elements must be relegated in the complaint if there is to be compliance with the provisions of the Federal Rules of Civil Procedure, for as has been authoritatively stated: [1823]

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[20] Federal Rules of Civil Procedure, Rule 7.
[21] Federal Rules of Civil Procedure, Rule 8.
[22] 1 Am. Jur., Actions, Sec. 20, page 417.

> "A claim showing a right to relief is not stated unless the statement of claim links the parties before the court with the legal wrong so as to entitle the plaintiff to judicial redress against the defendant." [23]

Fatal defects in the pleadings of all complainants are patent when examined in the light of those precepts; when considered on the background upon which the case against the subordinate officials of the Bureau of Reclamation was initiated and tried. No claim in the pleadings is made against the United States of America. Relief is not sought against the United States of America. Throughout, the complaining parties refer specifically to defendants, subordinate officials of the Bureau of Reclamation. That the relief sought is not against the United States of America has been definitely and succinctly declared by this Honorable Court:

"It is contended that the United States is an indispensable party; that this is in effect a suit against the United States, * * * But * * * the defendants [subordinate officials of the Bureau of Reclamation] in withholding the water from the plaintiffs' use, and threatening to do so, are exceeding any powers granted to them by the Act of Congress. That being so, neither the United States nor the Secretary of the Interior are indispensable parties, and this is not a suit against the United States." [24] (Emphasis supplied.)

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[23] Cyc. Fed. Proc.; 3d ed., vol. 4, Sec. 14.180, page 229.

[24] 90 F. Supp., 773, 802.

Having reviewed this proceeding, the United States Court of Appeals for the Ninth Circuit declared: "As is seen, the United States is not named as a party and the [District] court throughout its entertainment of the action has conducted the case upon its holding that the United States is not a party and is not a necessary or indispensable party to the maintenance of the action."[25] [1824] Under those circumstances it is respectfully submitted, this precept of law will govern: "No claim for relief is stated if the complaint pleads facts insufficient to show that a legal wrong has been committed, or omits an averment necessary to establish the wrong or fails so to link the parties with the wrong as to entitle the plaintiff to redress."[26] (Emphasis supplied.) Having failed to charge in this cause that the United States of America has invaded their rights; having failed to assert against the United States of America the facts from which a justiciable issue may arise against it, the plaintiffs and complainants necessarily fail to state a claim for which relief may be granted. Here there is nothing to which the United States of America may properly answer; nothing which places it on proof.[27]

Abundantly manifest, therefore, is the fact that

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[25] United States v. United States District Court in and for Southern District of California, Northern Division, et al., 206 F.2d 303, 306 (C.A. 9, 1953).

[26] Sutton, et al., v. Eastern Viavi Co., 138 F.2d 959, 960 (C.A. 7, 1943).

[27] Jablow v. Agnew, 30 F. Supp. 718 (D.C.S. D.N.Y. 1940).

neither the plaintiffs nor the complainants in intervention state a claim against the United States of America. Militating strongly in favor of that position are these factors:

(a) To the assertions, in support of the motion to dismiss by the defendant subordinate officials of the Bureau of Reclamation, that this action was against the United States of America; that it was an indispensable party, this Honorable Court ruled as follows: "as seen from the foregoing discussion, the defendants in withholding the water from the plaintiffs' use, and threatening to do so, are exceeding any powers granted to them by the Act of Congress. That being so, neither the United States nor the Secretary of the Interior are indispensable parties, and this is not a suit against the United States. The situation falls squarely within the doctrine of the test whether or not an injunctive decree would expend itself upon the United States because of authorization of the alleged taking of the plaintiffs' rights by an Act of Congress, or will prevent the defendants from doing acts which are unlawful because not authorized.

"In view of the fact that no statutory authority exists for the actions of the defendants, and that they are withholding and threaten to withhold water from the plaintiffs in excess of and contrary to the powers conferred upon them, such a decree obviously brings the situation clearly within the line of cases of United States v. Lee, 1882, 106 U. S. 196, 1 S. Ct. 240, 27 L. Ed. 171; * * *."[28]

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[28] 90 F. Supp. 773, 802.

(b) Predicated on the last quoted excerpt from the opinion of this Court the case was tried far in excess of two hundred days. Throughout that most extensive period the trial proceeded on the basis that the named defendants, as distinguished from the United States of America, are charged with

> "exceeding any powers granted to them by the Act of Congress"

are

> "withholding and threaten to withhold water from the plaintiffs in excess of and contrary to the powers conferred upon them."

Premised upon the allegations of the complaint, this Court specifically held that:

> "this is not a suit against the United States."

To labor further the proposition would in no way aid this Honorable Court. Suffice to state the complainants and all of them have failed to state a claim against the United States of America upon which relief could be granted. Accordingly, without submitting itself to jurisdiction, the United States of America reiterates its prayer that this cause be dismissed against it. [1826]

When Plaintiffs Sought Relief Pursuant to the Tucker Act for the Alleged "Taking" of Their Rights, They Disclosed that their Remedy at Law is Plain, Speedy, Complete, and Adequate, Thus Precluding Them From Resorting to Injunctive Relief.

Plaintiffs, subsequent to initiating this cause against the subordinate officials of the Bureau of Reclamation, as revealed above, brought suit to

recover compensation for the value of the rights to the use of water allegedly "taken" by the United States of America. They thus elected to pursue their legal remedy. By those actions for compensation they have effectively precluded themselves, under the circumstances, from having recourse to injunctive relief. Basis for that conclusion is this fundamental precept of the law: "Equity will not interfere to restrain the breach of a contract, or the commission of a tort, or the violation of any right, when the legal remedy of compensatory damages would be complete and adequate. The incompleteness and inadequacy of the legal remedy is the criterion which, under the settled doctrine, determines the right to the equitable remedy of injunction."[29] It has been likewise authoritatively declared that in proceeding against a defendant the complainant must plead and prove "the facts to show absence or inadequacy of the remedy at law."[30]

Moreover, it is respectfully submitted, that the actions of the subordinate officials of the Bureau of Reclamation alluded to in the Court's opinion could not result in the inapplicability of the equitable doctrine enunciated above; the Gerlach Decision reviews in detail the guarantees enjoyed by those who have rights to the use of water. The conclusions expressed in the preceding sentence are based upon the decision of the Supreme Court of the United States of America involving rights to the

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[29] Pomeroy's Equity Jurisprudence, Fifth Ed., Vol. 4, Sec. 1338, pages 935-936.

[30] Cye, Fed. Proc., 3d ed., Vol. 14, Sec. 73.35, page 766.

use of water in the San Joaquin River which the petitioners there alleged had been taken by the United States of America when it constructed Friant Dam and placed it in operation.[31] Reference in that [1827] connection is made to the fact that the decision of the Highest Court which has been alluded to was rendered subsequent to the opinion of this Honorable Court. There the Supreme Court sustained the awards to claimants under the Tucker Act whose rights to the use of water had been "taken" through the construction of Friant Dam. Too great emphasis may not be placed upon the express declaration of the Highest Court in the case last mentioned when it found that Congress intended to "take" the rights "under its power of eminent domain."[32]

Further, though the Court denied that the United States of America was developing the Central Valley Project, of which Friant Dam is a major component, under the "navigation power" it nevertheless specifically declared that the Congress was empowered to authorize and did in fact authorize the Central Valley Project.[33] The Highest Court having thus decided that the project was authorized, it is respectfully submitted that an earlier decision of the Highest Court enunciated the rule of law which will govern in the case which is here involved.[34] There, as in this case, an action was insti-

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[31] United States v. Gerlach Live Stock Company, 339 U. S. 725 (1950).
[32] Ibid., 339 U. S. 725, 739.
[33] Ibid., 339 U. S. 725, 737, 738, 739.
[34] Hurley v. Kincaid, 285 U. S. 95 (1931).

tuted to enjoin river development undertaken by the United States of America; there, as here, that development was pursuant to Congressional authorization, although in that case there was not the very important element of having the authorization approved by the Supreme Court of the United States.[35] Having reviewed the principles of law which are here involved, the Highest Court declared:

"If that which has been done, or is contemplated, does constitute such a taking, the complainant can recover just compensation under the Tucker Act in an action at law as upon an implied contract, since the validity of the Act and the authority of the defendants are conceded. * * * The compensation which he may obtain in such a proceeding will be the same as that which he might have been awarded had the defendants instituted the [1828] condemnation proceedings which it is contended the statute requires. Nor is it material to inquire now whether the statute does so require. For even if the defendants are acting illegally, under the Act, in threatening to proceed without first acquiring flowage rights over the complainant's lands, the illegality, on complainant's own contention, is confined to the failure to compensate him for the taking, and affords no basis for an injunction if such compensation may be procured in an action at law. The Fifth Amendment does not entitle him to be paid in advance of the taking. * * *

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[35] See United States v. Gerlach Live Stock Company, 339 U. S. 725 (1950).

"As the complainant has a plain, adequate and complete remedy at law, the judgment is reversed with direction to dismiss the bill without prejudice."[36] (Emphasis supplied.)

In a subsequent decision, referring to the case last cited, the Highest Court made this succinct, it is respectfully submitted, controlling, statement:

"Where substantial redress can be afforded by the payment of money and issuance of an injunction would subject the defendant to gross disproportionate hardship, equitable relief may be denied although the nuisance is indisputable. This is true even if the conflict is between interests which are primarily private. * * * Where an important public interest would be prejudiced, the reasons for denying the injunction may be compelling. * * * Such we think is the situation in the case at bar."[37]

Consonant with the principles reviewed above is the declaration made by the Supreme Court of the United States respecting facts virtually identical with those here under consideration.[38] In that case, as in this case, relief [1829] against the United States of America under the Tucker Act for the alleged taking of property was sought by plaintiff. An action for injunctive relief was likewise initiated. Having reviewed the facts and having made reference to the suit under the Tucker Act, the Supreme Court stated: "the questions propounded

[36] Hurley v. Kincaid, 285 U. S. 95, 104, 105 (1931).
[37] Harrisonville v. Dickey Clay Company, 289 U. S. 334, 338 (1932).
[38] Great Falls Manufacturing Co. v. Attorney General, 124 U. S. 581 (1887).

[by plaintiff] are not material in the determination of the present case. They have become immaterial by the act of the plaintiff in instituting suit against the United States in the Court of Claims. In that suit compensation was sought for its property taken for public use, while the present suit proceeds upon the ground that it has not been lawfully taken, and that it is entitled to be placed in possession thereof. * * * The plaintiff, by adopting that mode, has assented to the taking of its property by the Government for public use, and has agreed to submit the determination of the question of compensation to the tribunal named by Congress."[39] (Emphasis added.)

Further comment on the subject is unnecessary to establish the proposition that: [1] Injunctive relief is precluded when, as here, there is a complete and adequate remedy at law; [2] Plaintiffs have filed suits against the United States of America for the alleged taking of the rights which they claim. Accordingly, it is respectfully submitted the action should be dismissed.

Under the Laws of the State of California Injunctive Relief is Not Available to Plaintiffs or Complainants in Intervention.

"The construction of the [Friant] dam, which would result in the deprivation of plaintiff's rights, had been begun on November 3, 1939, a considerable time prior to October 20, 1941. * * * We hold that the taking of plaintiff's water rights occurred not later than October 20, 1941."[40] That decision, a

[39] Ibid., 124 U. S. 581, 598, 599.

[40] Gerlach Livestock Company v. United States, 76 F. Supp. 87, 98 (C.Cl. 1948).

revealed above, was affirmed by the Highest Court. Thus, although the "taking", of which plaintiffs in their Tucker Act suits complain, transpired not later than October 20, 1941, they having delayed six full years before [1830] bringing this suit, or the Tucker Act suits; although plaintiffs stood by permitting the United States to expend hundreds of millions of dollars in the construction of Friant Dam, the Friant-Kern Canal and the Madera Canal; although contracts were entered into for the delivery of the waters impounded at Friant Dam, the plaintiffs and complainants in intervention would invoke the powers of this Court to enjoin those activities. In the light of those indisputable facts, injunctive relief as prayed is not available under the laws of the State of California.[41] Where, as here, a public use has been invoked, the Supreme Court of California has specifically declared that the remedy of injunction is not available to the riparian claimant.[42] Under the prevailing circumstances, stated the court, the proceedings become "in fact an inverse condemnation suit, governed by the principles reviewed * * * in Collier v. Merced Irrigation District [supra]."[43] It was in contem-

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[41] Collier v. Merced Irrigation District, 213 Cal. 554, 2 P. 2d 790 (1931); Tulare Irrigation District v. Lindsay-Strathmore Irr. Dist., 3 Cal. 2d 489, 45 P. 2d 972 (1935); Peabody v. City of Vallejo, 2 Cal. 2d 351, 40 P. 2d 486 (1935); City of Lodi v. East Bay Utility Dist., 7 Cal. 2d 316, 60 P. 2d 439 (1936).

[42] Tulare Irrigation District v. Lindsay-Strathmore Irr. Dist., 3 Cal. 2d 489, 45 P. 2d 972 (1935).

[43] Ibid., 3 Cal. 2d 489, 45 P. 2d 972, 990.

plation of that doctrine of the law of the State of California that the Highest Court made this statement: "* * * withholding equitable remedies, such as specific performance, mandatory orders or injunctions, does not mean that no right exists. There may still be a right invasion of which would call for indemnification. In fact, adequacy of the latter remedy is usually grounds for denial of the former."[41] (Emphasis supplied.)

Worthy of reiteration in the light of the foregoing and based on the statements of the Highest Court of California and the Supreme Court of the United States, is the unquestioned fact that:

Plaintiffs have availed themselves of their remedy at law by proceeding against the United States of America pursuant to the Tucker Act to be compensated for the property allegedly "taken." That course does not have the disruptive effect upon a large section of the State of California which would necessarily result from an [1831] injunction against Friant Dam and appurtenant works which first went in operation twelve years ago. Failure on the part of some to press their claims for compensation in the ensuing twelve years does not change the fundamental tenets of the law which have been discussed above.

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[41] United States v. Gerlach Live Stock Company, 339 U. S. 725, 752 (1950).

The Judicial Branch of the Government of the United States of America May Not Invade or Usurp the Powers of the Executive Branch of the Government.

Congress authorized the construction of Friant Dam.[45] Full power to operate it has been conferred upon the Secretary of the Interior.[46] Plaintiffs and complainants in intervention seek nevertheless to enjoin those activities. It is respectfully submitted that this Court is without jurisdiction to accord to those parties the relief for which they pray. Reasons for that conclusion are well stated in the recent opinion of the United States Court of Appeals for the Ninth Circuit.[47]

Very early in our Nation's history the sphere in which the judiciary was to function as it related to the executive branch became a matter of utmost importance.[48] With infinite clarity that relationship was defined in these terms: "The province of the court is, solely, to decide on the rights of individuals, not to inquire how the executive, or executive officers, perform duties in which they have a discretion. Questions * * * which are, by the constitution and laws, submitted to the executive, can never be made in this court.

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[45] United States v. Gerlach Live Stock Company, 339 U. S. 725 (1950).

[46] United States v. Gerlach Live Stock Company, 339 U. S. 725 (1950).

[47] United States v. United States District Court in and for Southern Dist. of California, Northern Division, et al., 206 F. 2d 303 (C.A. 9, 1953).

[48] Marbury v. Madison, 5 U.S. 137, 170 (1803).

* * * "Where [as here] the head of a department acts in a case, in which executive discretion is to be exercised; in which he is the mere organ of executive will; it is again repeated, that any application to a court to control, in any respect, his conduct would be rejected without hesitation."[49]

Adhering to the principle that the courts will not substitute their [1832] discretion and judgment for that of an Executive officer, the Court refused to mandamus the Secretary of the Navy to perform acts in his official capacity respecting the payment of a pension to a widow of a deceased naval officer.[50]

Bearing precisely upon the power of the judiciary to enjoin authorized acts by officers in the executive branch of the Government of the United States is a recent decision.[51] In great detail the Supreme Court reviewed the grave peril that would necessarily ensue if the courts were to interfere with the authorized acts of agents of the executive branch of our National Government: "The Congress has increasingly permitted such suits to be maintained against the sovereign and we should give hospitable scope to that trend. But the reasoning is not applicable to suits for specific relief. For, it is one thing to provide a method by which a citizen may

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[49] Decatur v. Paulding, Secretary of the Navy, 39 U.S. 497 (1840).

[50] Decatur v. Paulding, Secretary of the Navy, 39 U. S. 497 (1840); See also Martin v. Mott, 25 U.S. 19, 31 (1827); United States v. Ide, 277 Fed. 373 (C.A. 8, 1921), affirmed 263 U.S. 497 (1924).

[51] Larson v. Domestic & Foreign Corporation, 337 U.S. 682 (1948).

be compensated for a wrong done to him by the Government. It is a far different matter to permit a court to exercise its compulsive powers to restrain the Government from acting, or to compel it to act. There are the strongest reasons of public policy for the rule that such relief cannot be had against the sovereign. The Government, as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right. As was early recognized, 'The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief * * *.' "[52]

As revealed by the last-cited case, the Court disclosed the fundamental reasons which restrain the judiciary from usurping the powers of the executive branch of the Government. Those reasons apply with even greater force to this case than the one to which they were addressed when consideration is given to the impact of an injunctive order upon the interests of the public in the present case. Important likewise was this statement by the Court: "* * * the necessity of [1833] permitting the Government to carry out its functions unhampered by direct judicial intervention outweighs the possible disadvantage to the citizen in being relegated to the recovery of money damages * * *."[53]

Supporting the motion to dismiss is therefore the

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[52] Ibid., 337 U.S. 682, 703, 704 (1948).

[53] Larson v. Domestic & Foreign Corporation, 337 U.S. 682, 704 (1948).

fundamental objection to the invasion by the judiciary of that area of governmental functions assigned by the Constitution to the legislative and executive branches. Next to be considered is whether the sovereign immunity of the National Government has been waived under the circumstances here presented.

The United States of America Has Not Waived Its Sovereign Immunity From Suit For Injunctive Relief; Or Under the Prevailing Circumstances.

Few principles of law are more firmly established than that a waiver of sovereign immunity from suit will be strictly construed by the court.[54] Respecting the immunity of the National Government from suit this statement has been made: "The rule of immunity of the Federal government from suit without its consent to be sued is all-embracing, and is applicable to all kinds of actions, * * *."[55] Thus on a background of complete immunity this matter must be considered. The courts have repeatedly held that: "It is not our right to extend the waiver of sovereign immunity more broadly than has been directed by the Congress."[56] Consonant with that view it has been stated that permission to sue the sovereign "will not be implied."[57]

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[54] United States v. Sherwood, 312 U.S. 584, 590 (1940).

[55] 54 Am. Jur., United States, sec. 128, p. 635.

[56] United States v. Shaw, 309, U.S. 495, 502 (1939).

[57] North Dakota-Montana W. G. Asso. v. United States, 66 F. 2d 573 (C.A. 8, 1933); cert. denied, 291 U.S. 672 (1934).

Justice Stone, speaking for the Supreme Court of the United States, emphasized this further principle which must govern the waiver of exemption from suit: "The United States, as sovereign, is immune from suit save as it consents to be sued, * * * and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." He added: "The [waiver] [1834] must be interpreted in the light of its function in giving consent of the Government to be sued, which consent, since it is a relinquishment of a sovereign immunity, must be strictly interpreted." [58]

On the subject this authoritative statement is pertinent: "While there have been and are many acts of Congress waiving Federal immunity from suit or granting the right to bring suit against the Federal government, in various classes of cases, usually where jurisdiction has been conferred on special courts or tribunals, the consent is ordinarily restricted to suits in Federal courts, and state courts have no jurisdiction." [59]

Consistent with the expression of legal principles contained in the last quotation, this fundamental declaration has been made: "It has been stated as a rule that the governmental waiver of sovereign immunity is strictly construed; that doubts as to consent and jurisdiction must be resolved in favor of the United States, and that the federal district

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[58] United States v. Sherwood, 312 U.S. 584, 586, 590 (1940).

[59] 54 Am. Jur., United States, sec. 133.

attorney and other administrative officers have no power to waive conditions or limitations."[60]

The immunity of the United States from suit extends to its property. On that subject the Supreme Court of the United States in a relatively recent decision commented as follows: "A proceeding against property in which the United States has an interest is a suit against the United States. * * * Hence [the state] cannot maintain this suit against the United States unless authorized by some act of Congress." Continuing, the Court added: "Where jurisdiction has not been conferred by Congress, no officer of the United States has power to give any court jurisdiction of a suit against the United States."[61] Moreover "[the United States] cannot be subjected to legal proceedings, at law or in equity, without their consent; and whoever institutes such proceedings must bring his case within the authority of some act of Congress."[62] [1835]

No benefit would be derived from laboring further the general proposition. It is clear beyond question that the United States is immune from suit in the absence of express waiver by Congress of that immunity. Examined in the light of those tenets of the law the efforts to join the United States of America as a party defendant in this injunctive proceeding must fail. Basis for that effort to join the United States was the rider to the Department

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[60] Cyc. Fed. Proc., 2d ed., vol. 1, sec. 72, p. 140.

[61] Minnesota v. United States, 305 U.S. 382, 386, 389 (1938).

[62] Belknap v. Schild, 161 U.S. 10, 16 (1895).

of Justice Appropriation Act for the year 1952.[63] There it is provided that the United States may be "joined" as a defendant in any suit [1] for the adjudication of rights to the use of water; [2] for the administration of such rights. No reference is made to actions for injunctions of the character here involved. In that regard this Court's opinion will be alluded to again, in which this cause was defined as follows:

> "The situation [this case] falls squarely within the doctrine of the test of whether or not an injunctive decree would expend itself upon the United States * * *."[64] (Emphasis supplied.)

Nowhere in the cited provision, upon which reliance is placed for the joinder of the United States in this cause, will there be found mention of injunctive proceedings. That is in keeping with the view expressed by the Highest Court in declaring that:

> "There are the strongest reasons of public policy for the rule that such [injunctive] relief cannot be had against the sovereign."[65] (Emphasis added.)

There being no mention of injunctive relief in the proviso relied upon, it necessarily follows that the Congress has not waived the immunity of the National Government from suits of that character for, as discussed above: "[The United States] cannot

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[63] Now cited as 43 U.S.C. 666.

[64] 90 F. Supp. 773, 802.

[65] Larson v. Domestic & Foreign Corporation, 337 U.S. 682, 704 (1948).

be subjected to legal proceedings, at law or in equity, without their consent; and whoever institutes such proceedings must bring his case within the authority of some act of Congress."[66] [1836]

If the provision relied upon related to injunctive proceedings, which is denied, there are other objections equally fundamental to its applicability in the light of prevailing facts. Here an injunctive proceedings was instituted against four officials of the Bureau of Reclamation; this Court and the Court of Appeals for the Ninth Circuit have both specifically declared that the United States of America was not a party to that action; in excess of two hundred (200) days of trial elapsed; on June 12, 1953; the taking of evidence was concluded; on that day, June 12, 1953, the day the trial was concluded, a notice to join the United States of America as a party was filed; on August 4, 1953, respecting the trial of this case the United States Court of Appeals for the Ninth Circuit stated; "the United States is not a party to the action, and no judgment in the case can be entered against it, and no judgment that may be entered in the case can be res judicata as to the United States."[67] Based on those facts which indisputably exist; predicated on the law as enunciated by the United States Court of Appeals, it is respectfully submitted that the Congress has not waived the immunity of the United

[66] Belknap v. Schild, 161 U.S. 10, 16 (1895).

[67] United States v. United States District Court in and for Southern Dist. of California, Northern Division, et al., 206 F. 2d 303, 307 (C.A. 9, 1953).

States of America from suit. From the provisions relied upon for the joinder of the United States, there is to be found no evidence of an intention by Congress which would subject the United States to jurisdiction under the prevailing circumstances. There is no express declaration, no basis for implying that the provision relied upon to join the United States was to have retroactive effect. Reference in that regard is made to the basic precept of statutory construction that: "Legislative enactments will not be construed as retrospective in their operation, even when permissible, unless it is clear they were intended to do so. This rule ought especially to be adhered to when such a construction will alter the pre-existing situation of parties or will affect or interfere with their antecedent rights. It is founded on the soundest principles of public policy, and its reason is manifest." [68] It has likewise been declared that: "Because of the intuitive belief that there is something inherently bad in [1837] retroactive legislation, some states have adopted express constitutional provisions against retroactive laws." [69] In a recent State court decision this statement was made: "One of the contentions of the city is that this [law] cannot have a retroactive effect unless there is an express declaration in the statutes so providing. We think that contention is sound. * * * It is a fundamental rule, supported by numerous deci-

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[68] United States v. McPhee, 51 Colo. 425, 431, 118 P. 996 (1911).

[69] Sutherland, Statutory Construction, 3rd ed., vol. 2, page 119.

sions, that statutes are not to be construed as having a retroactive effect unless the purpose and intention of the legislature to give them a retroactive effect clearly appears." [70]

Adopting virtually the same language as the State Court, the Supreme Court of the United States recently declared: "Retroactivity, even where permissible, is not favored, except upon the clearest mandate." [71] That Court has likewise stated: "Construction is not legislation and must avoid 'that retrospective expansion of meaning which properly deserves the stigma of judicial legislation.'" [72]

Further comment or citation of authority under the circumstances is unnecessary to disclose that the Congress has not waived the immunity of the United States of America from suit under the conditions which exist in this case. As a consequence it necessarily follows that the United States of America may not be made a party to this action and the complaint should be dismissed with respect to it.

This is Not a Class Action Under the Federal Rules of Civil Procedure; Plaintiffs are Not, in the Light of the Facts, Representative of the Class They Purport to Represent; If It is a Class Action, All of the Principles of Law Reviewed

[70] Denver v. Armstrong, 105 Colo. 290, 292, 97 P. 2d 448 (1939).

[71] Claridge Apartments Co. v. Commissioner, 323 U.S. 141, 164 (1944).

[72] Addison v. Holly Hill Fruit Products, Inc., 322 U.S. 607, 618 (1944).

Above Respecting Plaintiffs and Complainants in Intervention Apply Equally to the Members of the Alleged Class.

Plaintiffs assert their rights to the use of water in the San Joaquin River have been "taken." [73] The Supreme Court of the United States affirmed a [1838] decision of the Court of Claims to the effect that the "taking" of rights to the use of water transpired on October 20, 1941.[74] It is not to be presumed that plaintiffs in proceeding against the United States of America split their claims in regard to the alleged "taking." To the contrary, it is to be assumed that they claimed the full value of their rights which they assert were "taken." Based, therefore, on their own complaints under the Tucker Act, their title to the rights to the use of water which they originally held passed to the United States of America. It was in effect an inverse condemnation, assuming that the plaintiffs in their Tucker Act suits can prove a compensable "taking." Assuming proof within the scope of the Gerlach case the rights were taken "under its [Congress'] power of eminent domain." [75]

Predicated on plaintiffs' complaints in the Tucker Act cases, the inquiry necessarily arises as to the basis upon which they seek injunctive action. On

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[73] See page 1 of this Memorandum.

[74] Gerlach Livestock Co. v. United States, 76 F. Supp. 87; affirmed United States v. Gerlach Live Stock Company, 339, U.S. 725 (1950).

[75] United States v. Gerlach Live Stock Company, 339 U.S. 725, 739 (1950).

the subject it has been declared that: "Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient title or interest in the right or property sought to be protected. * * * The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of disputes respecting title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed." [76] It has likewise been stated that a plaintiff must "show ownership of a right by the plaintiff and violation of that right by the defendant * * *." [77] As emphasized above, where, as here, the plaintiffs alleged their rights have been "taken" by the United States of America it is impossible for them successfully to urge that the United States must be enjoined in regard to those rights.

As plaintiffs seek compensation for rights allegedly "taken" the next inquiry presented is whether they may be viewed as "adequate" representatives [1839] of the members of the class. [78] Clearly, their status differs very materially from the status of those they purport to represent. Adequate representation in a class action is comprised of several elements. Whether the interests of the named party are co-extensive with the interests of the other members of the class is a fundamental aspect of adequate

[76] 28 Am. Jur., Injunctions, Sec. 25, Page 218.
[77] Cyc. Fed. Proc., 3rd ed., vol. 4, Sec. 14.181, page 229.
[78] Federal Rules of Civil Procedure, Rule 23.

representation.[79] As plaintiffs assert their rights have been "taken" they could not occupy a status co-extensive with the others of the class. This authoritative statement has likewise been made: "It is the general rule that the person who brings a representative action must have an interest in the controversy common with those for whom he sues." [80] As plaintiffs have elected to secure compensation for the "taking" of their rights, they have no common interest with others who have not availed themselves of their remedy at law.

Assuming, solely for discussion, that this is truly a class action and the class is before the Court, it is then emphasized that each and every statement made above in support of the motion to dismiss applies equally to the class.

Conclusion

Without submitting to jurisdiction, the United States of America respectfully submits that this Court has decided in its opinion that the action here involved is not against the United States of America, the United States Court of Appeals likewise declared that the action is not against the United States of America. The complaints filed by all parties remain unchanged, thus the action could not be construed as one against the United States. Therefore, there is no claim against the

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[79] Moore's Federal Practice, 2nd ed., Vol. 3, page 3424.

[80] Cyc. Fed. Proc. 3rd ed., vol. 6, Sec. 23.08, page 669.

United States of America. Under those circumstances the cause should be dismissed.

Equally important is the fact that the parties have a plain, speedy, and adequate remedy at law—a remedy which the plaintiffs have pursued. Under [1840] those circumstances and by reason of the fundamental principle that the courts will not usurp the powers of the legislative and executive branches of the Government, the pleadings of all parties against the United States of America should be dismissed. Likewise manifest is the fact that the plaintiffs are not proper representatives of the class they purport to represent.

Finally, it is submitted, based on the authorities reviewed above, the Congress of the United States has not waived the immunity of the United States of America from suit under the circumstances which here prevail. As a consequence this Court does not have jurisdiction and the motion to dismiss of which this memorandum is in support should be granted.

Dated: December 14, 1953.

/s/ J. LEE RANKIN,
Assistant Attorney General,
Office of Legal Counsel,
/s/ LAUGHLIN E. WATERS,
United States Attorney,
So. District of California.

[Endorsed]: Filed December 14, 1953.

[Title of District Court and Cause.]

ANSWER OF CITY OF FRESNO TO AMENDED COMPLAINT IN INTERVENTION OF THE STATE OF CALIFORNIA

Comes Now the City of Fresno, a municipal corporation, as Defendant in Intervention under the Complaint in Intervention of the State of California, and answering said amended complaint in intervention of said State of California, as grounds for said answer, admits, denies and alleges as follows:

I.

Answering Paragraphs I and II of the State of California's amended complaint in intervention, this answering cross-defendant expressly denies that the State of California appears in said amended complaint in intervention for the protection of or in the interest of all of its citizens, residents, or landowners, or water users or its agencies or to protect the integrity or proper application of its Constitution or laws respecting water or the use thereof, or water rights, or contracts or property or property rights, or as absolute owner of the corpus of the water to be used in or by said Central Valley Project, but in this regard, this answering cross-defendant alleges that although the State is the technical legal owner of the waters of the San Joaquin River, such right of said State of California, is subject to the prior absolute right of cross-defendant to use of sufficient waters of said

San Joaquin River sufficient to feed, sustain and supply by seepage and percolation the underground percolating waters, water strata and subterranean streams underlying the lands within the boundaries of the City of Fresno, and the area adjacent to said City of Fresno, all of which underground percolating waters, water stratas and subterranean streams are now supplying water to the wells and pumps of the municipally owned water system of said City of Fresno, which wells and pumps of said municipally owned water system supply the inhabitants and citizens of this answering cross-defendant with water for domestic and municipal purposes and which said use for said municipal and domestic purposes are higher priority use under the Constitution and laws of said [1846] State of California, than the uses which said State of California illegally acting through its Attorney General Edmund G. Brown is by participation in the above entitled action, illegally and in violation of the Constitution and the laws of the State of California attempting to divert and illegally use on lands in the defendant's irrigation districts (with the exception of Tranquillity Irrigation District) which are parties to the above entitled action; that the State of California by appearing herein has become a full party whether defendant, complainant in intervention or defendant in intervention in the above entitled action, irrespective of its allegations in Paragraph I of its complaint in intervention on file herein; this answering cross-defendant denies that this answering cross defendant by reason of filings heretofore made on the waters of said San Joaquin River for

municipal and domestic uses is entitled to divert 150,000 acre feet of water annually from said San Joaquin River at Friant Dam and to store the same in Friant Dam upon paying to the defendant, United States of America just compensation for the facilities of said United States of America for taking, conveying and storing said water rendered valueless to said United States of America, which this answering defendant has offered to do and will do, but which said United States of America refuses to accept or do.

II.

Answering Paragraph III of said amended complaint in intervention, this answering cross defendant alleges that there are other acts and statutes of the United States under which the Secretary of the Interior of the United States was authorized to construct a Central Valley Project, than those set forth in said Paragraph III, and this answering cross-defendant denies that the United States is proceeding in substantial accord with said State Water Plan or the Constitution and laws of the State of California or the Constitution and [1847] statutes of the United States.

III.

Answering Paragraph IV of the State of California's complaint in intervention, this answering cross-defendant alleges that said Central Valley Project also includes a power generator at or near Friant Dam which is not mentioned in said Paragraph IV of said amended complaint in interven-

tion, and alleges that said Project should legally include sufficient flow down said San Joaquin River at all times to supply all riparian appropriative and prescriptive rights to waters of San Joaquin River below Friant Dam to supply water to the percolating water stratas from said San Joaquin River and to the subterranean streams fed and supplied by the San Joaquin River in times past and to supply the municipal and domestic surface needs of said City of Fresno under its filings, prior rights to said water or otherwise; that the present and intended operation of said Central Valley Plan by the Defendant Officials of the United States is illegal and in violation of the laws and statutes of the State of California and the United States, and particularly of sections 1460, 106, 103, 100, 1254, 1252, 101 and 11460 of the California Water Code, Article XIII of the Constitution of the State of California and the United States Declaration Act of June 17, 1902 (32 Stat. at L. 388, Chap. 1093) and other statutes of the State of California and of the United States.

IV.

Answering Paragraph V of said Amended Complaint in Intervention, plaintiffs deny that they entered into the Miller & Lux contracts referred to therein so that they could store water in Friant, free of the claims of any other parties, the waters of the San Joaquin River arising above said Friant Reservoir or to divert the same as alleged in said Paragraph V, and plaintiffs deny that the Central Valley Plan or the State Water Plan requires that

there be but a minimal flow, if any, between Friant Dam and [1848] Mendota Pool, but, in this regard, allege that the laws, statutes and the Constitution of the State of California require otherwise.

V.

Answering Paragraph VI of said Amended Complaint in Intervention, plaintiffs allege that all of the applications therein referred to and purportedly assigned to the United States Bureau of Reclamation are without right, title or effect, and are void and illegal.

VI.

Answering Paragraph VIII of said Amended Complaint in Intervention, plaintiffs deny that the Central Valley Project will provide a stabilized source of supplemental water supply, as in said Paragraph VIII alleged; and, in this regard, allege that Friant Dam and its diversion works do not constitute a reasonable or beneficial use or a proper use of the waters of the San Joaquin River, but allege that the storage and diversions at Friant Dam by the defendant employees of the United States Bureau of Reclamation is wasteful, unreasonable, unscientific, improperly engineered and in violation of the Constitution, Laws and Statutes of the State of California.

VII.

Answering Paragraph IX of the amended complaint in intervention of the State of California, this answering cross-defendant alleges it is entitled to sufficient flow out of Friant Dam and down the

San Joaquin River to sustain and replenish the underground and percolating water stratas and subterranean streams supplying the wells of the City of Fresno's municipal water system and in addition thereto a surface diversion from said San Joaquin River of 150,000 acre-feet annually and that the replenishment to said underground and subterranean water stratas and streams can be accomplished by the installation of the check dams and flow out of Friant as shown by the exhibits [1849] of Charles H. Lee (known as the Lee Plan on file in the above entitled action), and this answering cross-defendant denies that it should have to take compensation by way of damages but is entitled to the above flow of water down said San Joaquin River and that it will be irreparably damaged and its inhabitants, if the plans of cross-complainant herein and the plans of said defendant officials of said United States Bureau of Reclamation are carried out or the operation of the Central Valley Project as stated in said amended complaint in intervention, is carried out.

Wherefore, this answering cross-defendant prays for judgment as in its cross-complaint on file herein requests.

/s/ CLAUDE L. ROWE,
/s/ C. M. OZIAS,
Attorneys for the City of Fresno, a Municipal Corporation.

Duly Verified. [1850]

[Endorsed]: Filed December 16, 1953.

[Title of District Court and Cause.]

AMENDED ANSWER OF CITY OF FRESNO TO AMENDED COMPLAINT IN INTERVENTION OF THE STATE OF CALIFORNIA [1864]

Comes Now the City of Fresno, a municipal corporation, as defendant in intervention under the complaint in intervention of the State of California, and answering said amended complaint in intervention of said State of California, as grounds for said answer, admits, denies and alleges as follows:

I.

Answering Paragraphs I and II of the State of California's amended complaint in intervention, this answering defendant in intervention expressly denies that the State of California appears in said amended complaint in intervention for the protection of or in the interest of all of its citizens, resident, or landowners, or water users or its agencies or to protect the integrity or proper application of its Constitution or laws respecting water or the use thereof, or water rights, or contracts or property or property rights, or as absolute owners of the corpus of the water to be used in or by said Central Valley Project, but in this regard, this answering defendant in intervention alleges that although the State is the technical legal owner of the waters of the San Joaquin River, such right of said State of California, is subject to the prior absolute right of defendant in intervention to the use of sufficient

waters of said San Joaquin River sufficient to feed, sustain and supply by seepage and percolation the underground percolating waters, water strata and subterranean streams underlying the lands within the boundaries of the City of Fresno, and the area adjacent to said City of Fresno, all of which underground percolating waters, water stratas and subterranean streams are now supplying water to the wells and pumps of the municipally owned water system of said City of Fresno, which wells and pumps of said municipally owned water system supply the inhabitants and citizens of this answering defendant in intervention with water for domestic and municipal purposes, and which said use for said municipal and [1865] domestic purposes are higher priority uses under the Constitution and laws of said State of California, and the Constitution and laws of the United States of America, than the uses which said State of California, illegally acting through its Attorney General, Edmund G. Brown, is by participation in the above entitled action, illegally and in violation of the Constitution and the laws of the State of California attempting to divert and to assist defendant officials of the United States Bureau of Reclamation illegally use on lands in the defendant irrigation districts (with the exception of Tranquillity Irrigation District) which are parties to the above entitled action; that the State of California by appearing herein has become a full party whether defendant, complainant in intervention or defendant in intervention in the above entitled action, irrespective of its allega-

tions in Paragraph I of its complaint in intervention on file herein, this answering defendant in intervention alleges that this answering defendant in intervention by reason of filings heretofore made by this answering defendant in intervention on the waters of said San Joaquin River for municipal and domestic uses is by virtue of the Constitution and the laws of the State of California and the Constitution and laws of the United States entitled to divert 150,000 acre-feet of surface water annually from said San Joaquin River at Friant Dam and to store the same in Friant Dam upon paying to the defendant United States of America just compensation for the facilities of said United States of America for taking, conveying and storing said water rendered valueless to said United States of America, which this answering defendant has offered to do and will do, but which said United States of America refuses to accept or do.

II.

Answering Paragraph III of said amended complaint in intervention, this answering defendant in intervention alleges [1806] that there are other acts and statutes of the United States under which the Secretary of the Interior of the United States was authorized to construct a Central Valley Project than those set forth in said Paragraph III, and this answering defendant in intervention denies that the United States is proceeding in substantial accord with said State Water Plan or the Constitution and laws of the State of California or the Constitution and laws of the United States.

III.

Answering Paragraph IV of the State of California's complaint in intervention, this answering defendant in intervention alleges that said Central Valley Project also includes a power generator at or near Friant Dam which is not mentioned in said Paragraph IV of said amended complaint in intervention, and alleges that said Project should and does legally include sufficient flow down said San Joaquin River at all times to supply all riparian, appropriative and prescriptive rights to landowners along the San Joaquin River to waters of the San Joaquin River below Friant Dam, and to supply water to the percolating water stratas from said San Joaquin River and to the subterranean streams fed and supplied by the San Joaquin River in times past, from which said subterranean streams and stratas this answering defendant in intervention and the inhabitants within its boundaries are now pumping water, and to supply the municipal and domestic surface needs of said City of Fresno under its filings, and to supply the prior rights of this answering defendant in intervention to said water or otherwise; that the present and intended operation of said Central Valley Plan by the Defendant Officials of the United States Bureau of Reclamation is illegal and in violation of the laws and statutes of the State of California and the United States, and in excess of the authority of the defendant officials of the United States Bureau of Reclamation conferred [1867] upon defendants by those Certain Acts of Congress known as "The Basic Reclamation Act of June 17, 1902", as amended (43 U.S.C.

Sec. 391, 411, as amended); Act of August 30, 1935 (49 Stat. 1028, 1038); the Act of June 22, 1936 (49 Stat. 1597, 162); the Act of August 9, 1937 (50 Stat. 564, 592, 597); the Act of August 26, 1937 (50 Stat. 844, 850); the Act of March 2, 1938 (52 Stat. 83); the Act of May 9, 1938 (52 Stat. 291, 318, 319 and 324); Joint Resolution of June 21, 1938 (52 Stat. 809, 811 and 816); Act of May 10, 1939 (53 Stat. 685, 714 and 719); Act of August 4, 1939 (53 Stat. 1187, 1192, 1194, and 1197); Act of April 6, 1940, (54 Stat. 82, 87); Act of June 18, 1940 (54 Stat. 406, 432, 433, 437, 438); Act of October 17, 1940 (54 Stat. 1198, 1199); Act of June 28, 1941 (55 Stat. 303, 331, and 336); Act of July 30, 1941 (55 Stat. 810, 826); Act of July 8, 1942 (56 Stat. 650); Act of July 12, 1943 (57 Stat. 451, 472, 476); Act of June 28, 1944 (58 Stat. 463, 486, 487); Act of December 22, 1944 (58 Stat. 887, 888, 889, 890, 891, and 901); Act of July 25, 1947 (61 Stat. 460, 475) and Amendments to said foregoing Acts, and the Constitution and other laws and Statutes of the United States of America, or Section 3, Article XIV of the Constitution of California, the Water Code of California, and particularly Sections 1201, 1254, 1460, 1463, 1701, 1706, 103, 6,029, 11,460, 11,461, 11,463 of said Water Code, other laws and Statutes of the State of California and other sections of the Constitution of the State of California.

IV.

Answering Paragraph V of said amended complaint in intervention, this answering defendant

in intervention denies that the defendant officials of the United States Bureau of Reclamation entered into the Miller and Lux contracts referred to therein so that they could store water in Friant, free of the claims of any other parties to the waters of the San [1868] Joaquin River arising above said Friant Reservoir or to divert the same as alleged in said Paragraph V; and this defendant in intervention denies that the Central Valley Plan or the State Water Plan requires that there be but a minimal flow, if any, between Friant Dam and Mendota Pool, but in this regard alleges that the laws, statutes and the Constitution of the State of California, and the laws, statutes and Constitution of the United States require otherwise.

V.

Answering Paragraph VI of said amended complaint in intervention this defendant in intervention alleges that all of the applications therein referred to and purportedly assigned to the United States Bureau of Reclamation are without right, title or effect, and are void and illegal.

VI.

Answering Paragraph VIII of said amended complaint in intervention, defendant in intervention denies that the Central Valley Project will provide a stabilized source of supplemental water supply as in said Paragraph VIII alleged; and, in this regard alleges that Friant Dam and its diver-

sion works do not constitute a reasonable or beneficial use or a proper use of the waters of the San Joaquin River, but alleges that the storage and diversions at Friant Dam by the defendant officials and employees of the United States Bureau of Reclamation is wasteful, unreasonable, unscientific, improperly engineered and in violation of the laws, statutes and Constitution (Art. XIV-Sec. 3) of the State of California, and the laws, statutes and Constitution of the United States hereinabove referred to.

VII.

Answering Paragraph IX of the amended complaint in intervention of the State of California, this answering defendant in intervention alleges it is entitled to sufficient [1869] flow out of Friant Dam and down the San Joaquin River to sustain and replenish the underground and percolating water stratas and subterranean streams supplying the wells of the City of Fresno's municipal water system, and in addition thereto to a surface diversion from said San Joaquin River of 150,000 acre feet annually, and that the replenishment to said underground and subterranean water stratas and streams can either be accomplished by allowing the full flow of the San Joaquin River below Friant Dam, or can be accomplished by the installation of the check dams and flow out of Friant as shown by the exhibits of Charles H. Lee (known as the Lee Plan on file in the above entitled action), which said exhibits are expressly referred to and incorporated in this answer, and this answering defend-

ant in intervention denies that it should have to take compensation by way of damages, but is entitled to the above flow of water down said San Joaquin River and that it will be irreparably damaged and its inhabitants, if the illegal plans of cross-complainant herein and the illegal plans of said defendant officials of said United States Bureau of Reclamation are carried out or the operation of the Central Valley Project as stated in said amended complaint in intervention, are carried out.

Wherefore, this answering defendant in intervention prays for judgment as in its cross-complaint on file herein requests.

Dated: December 17, 1953.

/s/ CLAUDE L. ROWE,
Special Attorney for City of Fresno, a Municipal Corporation.

/s/ C. M. OZIAS,
Attorney for City of Fresno, a Municipal Corporation.

Duly Verified.

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

ANSWER OF TRANQUILLITY IRRIGATION DISTRICT TO AMENDED COMPLAINT IN INTERVENTION OF THE STATE OF CALIFORNIA

Comes Now Tranquillity Irrigation District, a public corporation, as Defendant in Intervention under the Complaint in Intervention of the State of California, and answering said amended complaint in intervention of said State of California, as grounds for said answer, admits, denies and alleges as follows:

I.

Answering Paragraphs I and II of the State of California's amended complaint in intervention, this answering defendant in intervention expressly denies that the State of California appears in said amended complaint in intervention for the protection of or in the interest of all of its citizens, residents, or landowners, or water users or its agencies or to protect the integrity or proper application of its Constitution or laws respecting water or the use thereof, or water rights, or contracts or property or property rights, or as absolute owner of the corpus of the water to be used in or by said Central Valley Project, but in this regard, this answering defendant in intervention alleges that although the State is the technical legal owner of the waters of the San Joaquin River, such right of said State of California is subject to the prior absolute right of

defendant in intervention to the use of sufficient waters of said San Joaquin River sufficient to feed, sustain and supply by seepage and percolation the underground percolating waters, water stratas, and subterranean streams underlying the lands within the boundaries of the Tranquillity Irrigation District, a public corporation, all of which underground percolating waters, water stratas, and subterranean streams are now supplying water to the wells and pumps of this answering defendant in intervention, and the wells and pumps of the land owners within the boundaries of this answering defendant in intervention, and the wells and pumps of all the complainants in intervention as a class set forth and described in the complaint in intervention of [1852] Tranquillity Irrigation District, a public corporation, et al. vs. Martin Blote, et al., with water for domestic and irrigation purposes, and which said use for said irrigation and domestic purposes have prior rights under the Constitution and laws of said State of California than the uses which said State of California illegally acting through its Attorney General, Edmund G. Brown, is by participation in the above entitled action, illegally and in violation of the Constitution and laws of the State of California and the Constitution and laws of the United States, attempting to divert and to assist defendant officials of the United States Bureau of Reclamation to illegally use on lands in the defendant irrigation districts, (with the exception of the Tranquillity Irrigation District) which are parties to the above entitled action; that the

action of said Attorney General Edmund G. Brown, in filing said complaint in intervention is not the true action of the said State of California, but in this regard, this answering defendant in intervention is informed and believes, and upon such information and belief, avers that the filing of said complaint in intervention by the State of California was a result of a political agreement wherein and whereby the then democratic Chief of the United States Bureau of Reclamation and the California Regional Director of the United States Bureau of Reclamation agreed to support the said Edmund G. Brown, a democrat, in return for the support of the said democratic Edmund G. Brown in assisting in putting into operation the plans of the said then Chief of the United States Bureau of Reclamation and said California Regional Director of the United States Bureau of Reclamation to ignore the higher priority uses of this answering defendant in intervention and to take water out of the watershed of the San Joaquin River without meeting the reasonable needs of the landowners and inhabitants in the watershed of the San Joaquin River and territory immediately adjacent thereto; that the State of California by [1853] appearing herein has become a full party to the above entitled action without limitation, whether defendant, complainant in intervention or defendant in intervention in the above entitled action, irrespective of its allegations in Paragraph I of its complaint in intervention on file herein, and this answering defendant in intervention is and for more than thirty (30) years last

past has been a public corporation formed, organized and existing under and by virtue of the laws of the State of California, and is and has been at all times herein mentioned located in Fresno County, California, within the watershed of the San Joaquin River, wherein the waters of said San Joaquin River originate, and which boundaries of said Tranquillity Irrigation District are and have been at all times herein mentioned also located in an area immediately adjacent to said San Joaquin River, which area (including said lands within the boundaries of said Tranquillity Irrigation District) can be conveniently supplied with water from said San Joaquin River, and its inhabitants and landowners supplied with water for irrigation and domestic purposes from said San Joaquin River; that the water requirements of said area, including the area within the boundaries of said Tranquillity Irrigation District, cannot be satisfied to the same extent of the hereinafter mentioned illegal and unlawful storage and diversions and transportation of waters of the San Joaquin River at Friant Dam by defendant officials of the United States Bureau of Reclamation and the threatened and illegal exchanges of water of said San Joaquin River by said defendant officials as set forth in plaintiffs complaint on file herein reference to which is herein expressly made, and which acts hereinafter mentioned, are permitted or allowed; that all of the lands within the boundaries of said Tranquillity Irrigation District, except the small piece of land used for a water storage reservoir by said Tranquillity Irriga-

tion Distict, all as shown on Exhibit "A" [1854] of this answering defendant in intervention's complaint in intervention on file herein, reference to which is expressly made and which is expressly incorporated as a part of this answer, are riparian to said San Joaquin River and Fresno Slough; that said Tranquillity Irrigation District now has approximately eleven (11) water wells and pumps located within the boundaries of said Tranquillity Irrigation District, as shown on said Exhibit "A", which pump water for the lands, landowners and inhabitants within said Tranquillity Irrigation District for the purpose of growing cotton, vegetables, alfalfa, rice and other agricultural products which for more than thirty (30) years last past have been and now are pumping from the underground water stratas, percolating waters and subterranean streams underlying said Tranquillity Irrigation District; that there are also numerous domestic wells and pumps of inhabitants and landowners within the boundaries of said Tranquillity Irrigation District which for more than thirty (30) years last past have been and now are pumping water for domestic purposes and uses within said Tranquillity Irrigation District from water stratas, percolating waters and subterranean steams underlying the lands within the boundaries of said Tranquillity Irrigation District; that the underground and percolating waters, water stratas and subterranean streams from which said pumps and wells of said Tranquillity Irrigation District and said domestic water wells and pumps of said inhabitants and landowners of said

Tranquillity Irrigation District are now pumping are supplied, replenished and supported normally and in the course of nature by the waters of said San Joaquin River (although at times said underground and percolating waters are supplemented with and substituted with foreign waters seeping into and from Fresno Slough, a slough running near the boundaries of said Tranquillity Irrigation District); that the full flow of said San Joaquin [1855] River down the natural channel of the San Joaquin River, unrestricted by any of the hereinafter mentioned illegal and unlawful storage and diversions and threatened and illegal and unlawful storage and diversions or transportation of the waters of said San Joaquin River by said defendant officials and employees of the United States Bureau of Reclamation is necessary to presently and in the future support and supply said percolating waters and subterranean streams and water stratas within the boundaries of said Tranquillity Irrigation District and which are fed, supported and supplied by the said San Joaquin River, as aforesaid; that if said defendant officials and employees of the United States Bureau of Reclamation are allowed to continue their illegal storage and diversions hereinafter referred to or to carry out their hereinafter threats of illegally and unlawfully storing and diverting and transporting the waters of said San Joaquin River at Friant Dam, as hereinafter alleged, or if the plan of physical solution of the State of California dated December 15, 1951 heretofore filed in the above entitled action, or the plan of

physical solution of the defendant employees and agents of the United States Bureau of Reclamation, dated December 15, 1951, heretofore filed in the above entitled action (reference to both of which plans is hereby expressly made and which said plans are hereby incorporated as a part of this answer are allowed to be carried out or placed in operation by said defendant officials of the United States Bureau of Reclamation, the water level of said wells of the Tranquillity Irrigation District and of the domestic wells of its landowners within the boundaries of said Tranquillity Irrigation District will fail, dry up and disappear, that said Tranquillity Irrigation District and its inhabitants and landowners will, in such events, not be able to pump sufficient water from said wells for its agricultural and their domestic [1856] purposes, all of which, if allowed, will irreparably injure and damage the health and property of the inhabitants thereof; that Tranquillity Irrigation District is without an adequate remedy at law in the premises; that the adoption and enforcement by the above entitled court of the physical solution, proposed and as set forth in the report of the original plaintiffs in the above entitled action and prepared by Charles H. Lee, dated December 15, 1951 on file herein, together with one additional dam across said San Joaquin River between Gravelly Ford and Mendota Pool referred to in the Charles H. Lee Report (which said plan of the said Charles H. Lee is expressly referred to and incorporated as a part of this answer) is necessary and will greatly help to

maintain supply and support the underground and percolating waters, water stratas and subterranean streams underlying the lands within the boundaries of said Tranquillity Irrigation District in event the full flow of said San Joaquin River below Friant Dam is not ordered or decreed by the above entitled court; that all lands within the boundaries of said Tranquillity Irrigation District, with the exception of the reservoir of Tranquillity Irrigation District shown on Exhibit "A" of this answering defendant in intervention's complaint in intervention on file herein, which said Exhibit A is expressly referred to and made a part of this answer, and at all times herein mentioned, are and were riparian to said San Joaquin River and to said Fresno Slough, which said Fresno Slough is and was at all times herein mentioned a part, inlet, branch, arm and tributary of said San Joaquin River, and which said owners of said lands within boundaries of said Tranquillity Irrigation District and said Tranquillity Irrigation District are and were at all times herein mentioned the owners of and entitled to use by virtue of riparian, prescriptive, appropriative and other rights owned by them, twelve percent (12%) of all of [1857] the entire natural flow of the San Joaquin River measured at White House, a water measurement station, located on said San Joaquin River near Mendota, California, in excess of 1360 second-feet as said natural flow would in the course of nature flow down said San Joaquin River and past said White House; that the aforementioned threatened and intended illegal acts of

defendant officials and employees of the United States Bureau of Reclamation will adversely affect and prejudice not only this answering defendant in intervention and its rights, but all other landowners whose lands lie within the boundaries of said Tranquillity Irrigation District, numbering approximately one hundred (100), and whose lands are riparian or abut or border on said San Joaquin River and said Fresno Slough, at all times herein mentioned a part, inlet, branch, arm and tributary of the said San Joaquin River, and who by virtue of their riparian, appropriative, prescriptive and other rights are the owners of and have the right to use said 12% of the waters of said San Joaquin River in excess of 1360 second-feet measured at White House as aforesaid.

II.

Answering Paragraph III of said amended complaint in intervention, this answering defendant in intervention alleges that there are other acts and statutes of the United States under which the Secretary of the Interior of the United States was authorized to construct a Central Valley Project, than those set forth in said Paragraph III of said complaint in intervention, and this answering defendant in intervention denies that the United States is proceeding in substantial accord with said State Water Plan or the constitution and laws of the State of California or the Constitution and laws of the United States. [1858]

III.

Answering Paragraph IV of the State of California's complaint in intervention, this answering defendant in intervention alleges that said Central Valley Project also includes a power generator at or near Friant Dam, which is not mentioned in said Paragraph IV of said amended complaint in intervention, nor has the same been constructed by, nor do said defendant officials of said United States Bureau of Reclamation intend to construct said power generator, and this answering defendant in intervention alleges that said Project should and does legally include sufficient flow down said San Joaquin River at all times to supply all riparian appropriative and prescriptive rights to the landowners along the San Joaquin River below Friant Dam, and to supply water to the percolating water stratas and to the subterranean steams fed and supplied by the San Joaquin River in times past, from which said subterranean streams and stratas this answering defendant in intervention and the inhabitants within its boundaries are now pumping water to supply the irrigation and domestic needs of said Tanquillify Irrigation District, and to supply the prior rights of this answering defendant in intervention to said water or otherwise, all as hereinbefore alleged and set forth; that the present and intended operation of said General Valley Plan by the Defendant officials of the United States Bureau of Reclamation is illegal and in violation of the laws and statutes of the State of California, and the laws and statutes of the United States, and in excess of the authority of the defendant officials

and employees of the United States Bureau of Reclamation conferred upon defendants by those certain Acts of Congress known as "The Basic Reclamation Act of June 17, 1902", as amended (43 U.S.C., Sec. 391, 411, as amended); Act of August 30, 1935 (49 Stat. 1028, 1038); the Act of June 22, 1936 (49 Stat. 1597, 1622); the Act of August 9, 1937 (50 Stat. 564, 592, 597); [1859] the Act of August 26, 1937 (50 Stat. 844, 850); the Act of March 2, 1938 (52 Stat. 83); the Act of May 9, 1938 (52 Stat. 291, 318, 319 and 324); Joint Resolution of June 21, 1938 (52 Stat. 809, 811 and 816); Act of May 10, 1939 (53 Stat. 685, 714 and 719); Act of August 4, 1939 (53 Stat. 1187, 1192, 1194 and 1197); Act of April 6, 1940 (54 Stat. 82, 87); Act of June 18, 1940 (54 Stat. 406, 432, 433, 437, 438); Act of October 17, 1940 (54 Stat. 1198, 1199); Act of June 28, 1941 (55 Stat. 303, 331 and 336); Act of July 30, 1941 (55 Stat. 810, 826); Act of July 8, 1942 (56 Stat. 650); Act of July 12, 1943 (57 Stat. 451, 472, 476); Act of June 28, 1944 (58 Stat. 463, 486, 487); Act of December 22, 1944 (58 Stat. 887, 888, 889, 890, 891, and 901); Act of July 25, 1947 (61 Stat. 460, 475) and Amendments to said foregoing Acts, and the Constitution and other laws and Statutes of the United States of America, or Section 3, Article XIV of the Constitution of California, the Water Code of California, and particularly Sections 1201, 1254, 1460, 1463, 1701, 1706, 103, 6,029, 11,460, 11,461, 11,463 of said Water Code, other laws and statutes of the State of California and other sections of the Constitution of the State of California.

IV.

Answering Paragraph V of said amended complaint in intervention this answering defendant in intervention denies that the United States of America and the defendant officials of the United States of America, Bureau of Reclamation, entered into the Miller & Lux contracts referred to therein so that they could store water in Friant free of the claims of any other parties to the waters of the San Joaquin River [1860] arising above said Friant Reservoir or to divert the same as alleged in said Paragraph V, but in this regard this defendant in intervention alleges said contracts require the surface rights to waters of said San Joaquin River of this defendant in intervention to be recognized; and this defendant in intervention denies that the Central Valley Plan or the State Water Plan require that there be but a minimal flow, if any, between Friant Dam and Mendota Pool, but in this regard alleges that the laws, statutes and the Constitution of the State of California, and the laws, statutes and the Constitution of the United States of America, require otherwise.

V.

Answering Paragraph VI of said amended complaint in intervention, this answering defendant in intervention alleges that all of the applications therein referred to and purportedly assigned to the United States Bureau of Reclamation are without right, title or effect and are void and illegal.

VI.

Answering Paragraph VIII of said Amended complaint in intervention, this defendant in intervention denies that the Central Valley Project will provide a stabilized source of supplemental water supply as in said Paragraph VIII alleged; and, in this regard, alleges that Friant Dam and its diversion works do not constitute a reasonable or beneficial use or a proper use of the waters of the San Joaquin River, but allege that the storage and diversions at Friant Dam by the defendant officials of the United States Bureau of Reclamation is wasteful, unreasonable, unscientific, improperly engineered, and in violation of the Constitution (Art. XIV, Sec. 3), Laws and Statutes of the State of California, and the Constitution, laws and statutes of the United States hereinabove referred to. [1861]

VIII.

Answering Paragraph IX of the amended complaint in intervention of the State of California, this answering defendant in intervention alleges it is entitled to sufficient flow out of Friant Dam and down the San Joaquin River to sustain and replenish the underground and percolating water stratas and subterranean streams supplying the wells of this answering defendant in intervention, and the wells of the landowners within the boundaries of this answering defendant in intervention, and in addition thereto, to Twelve Percent (12%) of all of the natural flow of the San Joaquin River in excess of 1360 second-feet measured at White House, as

aforesaid; that the replenishment to said underground and subterranean water stratas and streams can be accomplished by the installation of the check dams and flow out of Friant as shown by the exhibits of Charles H. Lee (known as the Lee plan on file in the above entitled action, which said exhibits are expressly incorporated in this answer), and this answering defendant in intervention denies that it should have to take compensation by way of damages, but is entitled to the above flow of water down said San Joaquin River and that it will be irreparably damaged and its inhabitants if the illegal plans of cross-complainant herein, and the illegal plans of said defendant officials of said United States Bureau of Reclamation are carried out or the operation of the Central Valley Project as stated in said amended complaint in intervention are carried out.

Wherefore, this answering defendant in intervention prays for judgment as in its cross-complaint on file herein requests.

Dated this 16th day of December, 1953.

/s/ CLAUDE L. ROWE,
Attorney for Tranquillity
Irrigation District.

Duly Verified. [1862]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL [1873]

State of California,
County of Fresno—ss.

Marcia Mott, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of eighteen years of age and not a party to the above entitled action.

That on the 17th day of December, 1953, she deposited in the United States mails in the post office at Fresno, California, in the above entitled action, in an envelope bearing the requisite postage, a copy of the following:

1. Answer of Tranquillity Irrigation District to Amended Complaint in Intervention of the State of California.

2. Amended Answer of City of Fresno to Amended Complaint in Intervention of the State of California.

3. Affidavit of Service by Mail.

addressed to each of the following:

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Dep-

uty Attorney General of the State of California, State Building, San Francisco, California;

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District, and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Bank of America Building, Visalia, California, attorney for Lindsay-Strathmore Irrigation Districts and Lindmore & Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucedito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North Church St., Visalia, Calif., Attorney for Stone Corral Irrigation Districts;

Herbert Brownell, Attorney General of the United States, Washington, D. C.;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for Defendant Officials of the Bureau of Reclamation;

Green, Green & Plumley, Attorneys at Law, 219

South D Street, Madera, California, attorneys for Chowchilla Water Dist., et al.; [1874]

David E. Peckinpah and Harold M. Child, Attorneys at Law, attorneys for Madera Irrigation District, et al., 431 Brix Building, Fresno, California;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Henry & Kuney, Attorneys at Law, P. O. Box 29, Tulare, California, attorneys for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California.

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ MARCIA C. MOTT.

Subscribed and sworn to before me this 17th day of December, 1953.

[Seal] /s/ CLAUDE L. ROWE,
Notary Public in and for said County and State. [1875]

[Endorsed]: Filed December 18, 1953.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL OF MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

State of California,
County of Los Angeles—ss.

Dorothy D. Cutler, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 807 Federal Building, Los Angeles 12, California; that she is over the age of eighteen years and not [1879] a party to the above-entitled action;

That on the 14th day of December, 1953, she deposited in the United States mails in the post office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Motion to Dismiss and Memorandum in Support of Motion to Dismiss, addressed to Claude L. Rowe, Attorney at Law, 910 Security Bank Building, Fresno 21, California;

That on the 17th day of December, 1953, she deposited in the United States mails in the post office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Motion to Dismiss and Memorandum in Support of Motion to Dismiss, addressed to Honorable Edmund G.

Brown, Attorney General, State of California, Library and Courts Building, Sacramento, California;

That on the 21st day of December, 1953, she deposited in the United States mails in the post-office at Temple and Main Streets, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Motion to Dismiss and Memorandum in Support of Motion to Dismiss, addressed to each of the following:

David E. Peckinpah and Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California;

Maddox & Abererombie and Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California;

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California;

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California;

That there is a delivery service by United States mail from said post office to each of the above addresses.

/s/ DOROTHY D. CUTLER.

Subscribed and sworn to before me this 21st day of December, 1953.

[Seal] /s/ ALBERT N. MINTON,
Notary Public in and for said County and State.
My commission expires Feb. 9, 1955. [1880]

[Endorsed]: Filed December 21, 1953.

[Title of District Court and Cause.]

ALIAS SUMMONS

(On Amended Complaint in Intervention)

To the above named Defendant: Edwin F. Sullivan, individually:

You are hereby summoned and required to serve upon Edmund G. Brown, Attorney General, State of California, plaintiff's attorney, whose address is: San Francisco, California, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ L. CUNLIFFE,
Deputy Clerk.

Date: November 30, 1953.

Return on Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and Amended Complaint in Intervention on the therein-named Edward F. Sullivan, by handing to and leaving a true and correct copy thereof with him personally at Fresno, California,

in said District on the 2nd day of December, 1953.
Fees $2.00

ROBERT W. WARE,
U. S. Marshal,
/s/ By DAVID S. HAYDEN,
Deputy.

[Endorsed]: Filed December 30, 1953.

[Title of District Court and Cause.]

ALIAS SEPARATE SUMMONS

(On Amended Complaint in Intervention)

To the above named Defendant: Edwin F. Sullivan, as Operator Supervisor of The Bureau of Reclamation, Department of Interior,

You are hereby summoned and required to serve upon Edmund G. Brown, Attorney General, State of California, plaintiff's attorney, whose address is: San Francisco, California, an answer to the complaint which is herewith served upon you, within sixty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] EDMUND L. SMITH,
Clerk of Court,
/s/ L. CUNLIFFE,
Deputy Clerk.

Date: November 30, 1953.

Return on Service of Writ

United States of America,
Southern District of California—ss.

I hereby certify and return that I served the annexed Summons and Amended Complaint in Intervention on the therein-named Edward F. Sullivan as Operation Supervisor of the Bureau of Reclamation, Department of Interior, by handing to and leaving a true and correct copy thereof with him personally at Fresno, California, in said District on the 2nd day of December, 1953.

Fees $2.00

ROBERT W. WARE,
U. S. Marshal,
/s/ By DAVID S. HAYDEN,
Deputy.

[Endorsed]: Filed December 30, 1953.

[Title of District Court and Cause.]

ORDER DENYING MOTION OF THE UNITED STATES OF AMERICA TO DISMISS

The United States of America, acting through J. Lee Rankin, Assistant Attorney General, and Laughlin E. Waters, United States Attorney, having on or about the 14th day of December, 1953, filed a Motion to Dismiss the Complaint in the above entitled action as against the United States of America, to dismiss the Complaint in Interven-

tion of the City of Fresno, a municipal corporation as against the United States of America [1932] and to dismiss the Complaint in Intervention of Tranquillity Irrigation District, a public corporation as against the United States of America, and the Complaint in Intervention of Emil Schramm as against the United States of America, and it appearing to the above entitled court that the United States is not a Defendant in Intervention in the Complaint in Intervention of the said Emil Schramm, and the matter of said motion to dismiss of said United States of America having come up regularly for hearing before the above entitled court in Los Angeles, California on the 11th day of January, 1954, Albert Minton and Joseph R. McPherson, Special Assistants to the Attorney General of the United States appearing in open court for the United States of America, and the court having heard the arguments of all counsel for the parties appearing herein, and being fully advised in the premises, Now, Therefore, Good Cause Appearing,

It Is Hereby Ordered, Adjudged and Decreed that the motion of the United States of America to dismiss the Complaint in the above entitled action, the Complaint in Intervention of the City of Fresno, a municipal corporation, in the above entitled action, and the Complaint in Intervention of Tranquillity Irrigation District, a public corporation, in the above entitled action as against the United States of America, is hereby denied.

It Is Further Ordered that service of the within Order shall be made by mail under the Rules and that the United States shall thereafter have twenty (20) days in which to answer.

Dated this 30th day of January, 1954.

/s/ PEIRSON M. HALL,
Judge of the United States District Court. [1933]

[Endorsed]: Filed February 1, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT IN INTERVENTION OF TRANQUILLITY IRRIGATION DISTRICT [1965]

Comes now the complainant in intervention, Tranquillity Irrigation District, a public corporation, and brings this supplemental complaint in intervention in the above entitled action, and alleges as follows:

I.

That since the filing of the complaint in intervention herein, the following material facts, as alleged in Paragraphs II, III, IV and V hereof, have occurred.

II.

That on or about the 1st day of July, 1953, as alleged in complainant's complaint in intervention on file herein, as amended, Clyde Spencer was appointed Supervising Engineer, California Projects,

United States Bureau of Reclamation, succeeding the former defendant Richard Boke, who resigned as Regional Director and as Regional Director, Region 2, United States Bureau of Reclamation on or about said 1st day of July, 1953, as alleged in complainant's complaint in intervention on file herein, as amended; that defendant Clyde Spencer, since on or about July 1st, 1953, and at all times herein mentioned has been, was, and is the Supervising Engineer, California Projects, United States Bureau of Reclamation and complainant in intervention is informed and believes, and upon such information and belief alleges that the said Clyde Spencer has also at various times herein mentioned and in complainant's complaint in intervention on file herein, as amended, mentioned, since said 1st day of July, 1953, acted under the name and title of Regional Director, United States Bureau of Reclamation, under the name and title of Regional Director, Region 2, United States Bureau of Reclamation, and under the name and title of Supervising Engineer, United States Bureau of Reclamation; that the said defendant, Clyde Spencer, irrespective of the title or the office which he held, in his official capacities above named had, and has at all times herein mentioned substantially the same powers and duties as his predecessor, Richard Boke, had in his official capacities hereinabove mentioned; that the said Clyde Spencer, individually, and in his foregoing official [1967] capacities since his said appointment, has adopted, adopts, continues and threatens to adopt and to continue the illegal, unlawful acts and

acts in excess of the authority of his office and employment as regards the illegal storage, diversion, transportation and sale of the waters of the San Joaquin River set forth in complainant's complaint in intervention, as amended; that his predecessor in office, the said former defendant, Richard Boke, individually and as said Regional Director, Region 2 of said United States Bureau of Reclamation adopted, continued and threatened to continue and adopt, all as alleged in complainant's complaint in intervention on file herein, as amended, reference to which is hereby expressly made, and that since his said appointment on or about July 1, 1953, the said Clyde Spencer, individually and in his foregoing official capacities, adopts, has adopted, continues to adopt and threatens to adopt the illegal actions which the said former defendant Richard Boke individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred by complainant in intervention to be in violation of the Constitution of the United States, which said laws and statutes are more particularly set forth in complainant's complaint in intervention on file herein, as amended, reference to which is hereby expressly made and which complaint in intervention, as amended, is incorporated herein;

That on or about the 6th day of November, 1953, as alleged in complainant's complaint in intervention on file herein, as amended, the said defendant, Edwin F. Sullivan was appointed Operations Supervisor, Fresno Operations Office, United States

Bureau of Reclamation, succeeding the former defendant, Jack Rodner, as Fresno District Manager, United States Bureau of Reclamation; who resigned as Fresno District Manager, United States Bureau of Reclamation on or about the said 6th day of November, 1953; that defendant Edwin F. Sullivan at all times herein mentioned since on or about the 6th day of November, 1953, has been the Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, and at all times since on or about the said 6th day of November, 1953, irrespective [1968] of the title or the office which he held, has had substantially the same powers and duties as the former defendant, Jack Rodner, Fresno District Manager of the Fresno District Office of the United States Bureau of Reclamation (excepting the operation of the Delta-Mendota Canal) with immediate supervision and control over Friant Dam, the Friant-Kern Canal, the Friant-Madera Canal, and discharges and releases of water from the Friant Dam into the San Joaquin River under the general supervision and direction of the said defendant, Clyde Spencer, in his official capacities and employment above mentioned; that the said Edwin F. Sullivan, individually, and in his official capacities above named, has adopted, continues and threatens to adopt the same illegal actions and acts in excess of the authority of his office and employment as his predecessor in office and employment, the said Jack Rodner, individually and officially, adopted, continued and threatened to adopt; that the said defendant, Edwin F. Sullivan, individually

and in his official capacities above named, adopted, continued and threatens to adopt the same illegal actions which the said former defendant, Jack Rodner, individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred to be unconstitutional in complainant's complaint in intervention on file herein, as amended; that there is substantial need for continuing this said action against said Clyde Spencer and Edwin F. Sullivan individually and in their official capacities as alleged in complainant's complaint in intervention on file herein, as amended.

That defendant Martin Blote is and was at all times herein mentioned the Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, and complainant in intervention is informed and believes, and upon such information and belief avers that the said Martin Blote is and has also operated at all times herein mentioned under the name and title of Regional Water Master of the said United States Bureau of Reclamation, with authority over the operation of the projects of the Central Valley Plan of the United States Bureau of Reclamation under the general supervision and [1969] direction of the said defendant Clyde Spencer and his predecessor in office, in their official capacities and employment, all as aforesaid.

That Pacific Gas and Electric Company, a corporation, is and was at all times herein mentioned and in the amended complaint in intervention on file herein mentioned, a corporation duly formed, or-

ganized and existing under and by virtue of the laws of the State of California, and is and was at all times herein mentioned and in the amended complaint in intervention on file herein mentioned, conducting business and operating a public utility business for the sale of electrical energy and natural and artificial gas within said United States Judicial District for Southern California and within the jurisdiction of the above entitled Court;

That Consolidated Irrigation District, International Water District, Homeland Reclamation District No. 780, and Nunes Water District are and were at all times herein mentioned public corporations, duly formed, organized and existing under and by virtue of the laws of the State of California, and are and were at all times herein mentioned operating a water distribution business in said United States Judicial District of Southern California and within the jurisdiction of the above entitled Court.

III.

That on or about the 25th day of May, 1954, defendant Clyde Spencer, purporting to act as Regional Director, Region 2, of the United States Bureau of Reclamation (and complainant in intervention is informed and believes, and upon such information and belief alleges, also as Regional Director of said United States Bureau of Reclamation and as California Projects Engineer of said United States Bureau of Reclamation) and said defendant, Pacific Gas and Electric Company, a corporation, signed and mutually delivered, the one to the other,

a purported written contract purporting to sell and deliver by means of diversion at Friant Dam through the Friant-Kern Canal, to said defendant, Pacific Gas and Electric Company a minimum of 130,000 acre-feet of the waters of the San Joaquin River [1970] during a four year period beginning March 1, 1954, and ending on or about February 28, 1958, for the sum of $3.50 per acre-foot, said water to be diverted out of Friant Dam through the Friant-Kern Canal of the United States Bureau of Reclamation and delivered to defendant, Pacific Gas and Electric Company at a point in Fresno County, California where said Friant-Kern Canal intersects the Kings River in said County; that said purported contract provides in addition thereto that additional waters of said San Joaquin River in addition to said 130,000 acre feet of said waters may be purchased by defendant Pacific Gas and Electric Company, a corporation, and delivered in a similar manner upon mutual agreement of the defendant, Pacific Gas and Electric Company, a corporation, and defendant Clyde Spencer in his aforesaid capacities;

That complainant in intervention is informed and believes, and upon such information and belief alleges that on or about the 25th day of May, 1954, an additional purported written contract between said defendant official of the United States Bureau of Reclamation, the said Clyde Spencer, purporting to act as Regional Director, Region 2 of the United States Bureau of Reclamation, (and complainant in intervention is informed and believes, and upon

such information and belief avers, also as Supervising Engineer, California Projects, United States Bureau of Reclamation and as Regional Director, United States Bureau of Reclamation) and the defendant, Pacific Gas and Electric Company was illegally and unlawfully made, executed and mutually delivered, the one to the other, whereby said Pacific Gas and Electric Company purportedly purchased an additional 3,000 acre-feet annually of the waters of the San Joaquin River at a price of approximately $3.50 per acre foot, to be illegally delivered by said defendant officials and employees of said United States Bureau of Reclamation to said defendant Pacific Gas and Electric Company through said Friant-Kern Canal at a point in Kern County, California, near the terminus of the Friant-Kern Canal, which said purported written contract for the purchase of said 3,000 acre-feet annually of said waters of said San Joaquin River, complainant in intervention is [1971] so informed and believes, and upon such information and belief alleges was and is to continue for approximately 40 years thereafter; that all of said waters of said San Joaquin River which have been or will be so illegally and unlawfully stored, diverted, transported and purportedly sold to said defendant, Pacific Gas and Electric Company, the complainant, the complainant in intervention City of Fresno and the plaintiffs as hereinafter set forth, are and were entitled to the reasonable, beneficial use of, under reasonable methods of diversion and use and below Friant Dam for the purposes all as set forth in the com-

plainant's complaint in intervention on file herein, as amended, and in the complaint in intervention of said City of Fresno, as amended, and said plaintiffs' complaint, as amended, reference to which is hereby expressly made, and the allegations of complainant's complaint in intervention on file herein and amendments thereto are expressly made a part hereof, as aforesaid.

That complainant in intervention is informed and believes, and upon such information and belief avers that all of said waters of the said San Joaquin River so sold, stored, diverted, transported and delivered, or intended and threatened to be hereafter illegally stored, sold, transported and delivered by said before-mentioned defendant officials and employees of said United States Bureau of Reclamation, as hereinabove set forth under said before-mentioned purported written contracts with said defendant Pacific Gas and Electric Company, a corporation, are to be used for industrial purposes, to wit, the generation of electrical energy, by direct use of the same, by means of the exchange of said waters of said San Joaquin River for other waters or by means of supplying percolating waters to water stratas from which Pacific Gas and Electric Company pumps water for said industrial purposes.

That complainant in intervention is informed and believes, and upon such information and belief avers that sometime during the year 1954, the exact time being unknown to this complainant in intervention, said defendant, Clyde Spencer purporting

to act as Regional [1972] Director, Region 2, United States Bureau of Reclamation, (and complainant in intervention is informed and believes, and upon such information and belief alleges, as Supervising Engineer, California Projects, United States Bureau of Reclamation, and as Regional Director of said United States Bureau of Reclamation), illegally and unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, made and entered into a purported written contract with defendant Consolidated Irrigation District, a public corporation, which was mutually signed, executed and delivered the one to the other, whereby said Consolidated Irrigation District, a public corporation, purportedly purchased approximately 30,000 acre-feet of water of said San Joaquin River for $3.50 an acre foot to be and which was delivered to said Consolidated Irrigation District during the year 1954 at a point in Fresno County, California, where the said Friant-Kern Canal intersects the Kings River in said County for agricultural purposes.

That complainant in intervention is informed and believes and upon such information and belief avers, that said defendant Clyde Spencer in his aforesaid capacities as an official of the United States Bureau of Reclamation, sometime during the year 1954, the exact time being unknown to the complainant in intervention, illegally, unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, and in excess of the authority conferred upon him

by the laws and statutes of the United States, made and entered into written contracts with International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public corporation, which were signed and mutually delivered, the one to the other, for the sale and delivery of certain unknown amounts of waters of said San Joaquin River to said defendant public corporations, the said International Water District, Homeland Reclamation District No. 780, and Nunes Water District, to be diverted at Friant Dam through the Friant-Kern Canal, at prices and at points [1973] of delivery now unknown to this complainant in intervention, and complainant in intervention is informed and believes, and upon such information and belief avers that the defendant officials and employees of said United States Bureau of Reclamation are threatening to illegally and unlawfully store, sell, deliver and transport additional waters of said San Joaquin River to said defendant public corporations heretofore mentioned, in the same manner, except as to length of time and points of delivery, as said defendant officials of said United States Bureau of Reclamation are threatening to illegally store, sell, transport and deliver to the defendant irrigation and municipal utility districts mentioned in complainant's complaint in intervention, as amended, all as set forth in said complainant's complaint in intervention as amended.

That all of said waters of said San Joaquin River covered by said purported illegal written con-

tracts hereinabove mentioned were, have been, will be, are intended to be, and are threatened to be illegally and unlawfully stored, sold, diverted, transported by said aforementioned defendant officials and employees of the United States Bureau of Reclamation in the same manner except as to points of delivery, length of time of delivery, as said defendant officials and employees of said United States Bureau of Reclamation have and intend to illegally store, divert and transport other waters of the San Joaquin River at and from a point near Friant Dam to the other defendants named in complainant's complaint in intervention on file herein, as amended, the allegations of which are specifically referred to and have heretofore been incorporated herein.

III.

That said defendant officials and employees of said United States Bureau of Reclamation have, intend to and threaten to continue to so illegally store, sell, divert and transport all of said waters of said San Joaquin River mentioned in said beforementioned and in this paragraph mentioned purported written contracts with said defendant public districts and said defendant Pacific Gas and Electric Company, a corporation (excepting defendant International [1974] Water District, a public corporation) as heretofore stated, entirely out of the watershed of the San Joaquin River above the intersection of said watershed of the San Joaquin River with Fresno Slough above which the lands of plaintiffs are located, unless restrained by order of

the above entitled Court, to the irreparable damage of complainant in intervention as hereinafter set forth.

IV.

That the complainants in intervention the City of Fresno and Tranquillity Irrigation District, and the plaintiffs are entitled to the use of all of said waters of said San Joaquin River covered by the terms of the hereinabove mentioned purported contracts, as riparian, prescriptive or appropriative owners and users of the waters of the San Joaquin River, and as owners of lands overlying subterranean streams and water stratas fed and supplied by said San Joaquin River, as more particularly set forth and described in complainant's complaint in intervention on file herein, as amended, and as holders and owners of first priority filings on said waters of said river under the Constitution, laws and statutes of the State of California, and under the laws and statutes of the United States for the appropriation of said waters of said San Joaquin River, as set forth in the complaint in intervention of said Tranquillity Irrigation District herein, which said waters complainant in intervention and said complainant in intervention the City of Fresno and the plaintiffs herein have used, now use and intend to use or will use in the future legally and lawfully under reasonable methods of diversion and use for beneficial purposes, to wit, for agricultural, domestic and municipal purposes, all as set forth in complainant's complaint in intervention as amended on file herein, in the complaint in intervention as

amended of the City of Fresno and in plaintiffs' complaint, as amended, on file herein, reference to all of which is and has heretofore been expressly made as herein set forth; that said illegal storage, diversion, sale, transportation, and said intended and threatened illegal storage, sale, diversion, and transportation and use of said waters of said San Joaquin River [1975] heretofore made or threatened to be made by said aforesaid defendant officials and employees of said United States Bureau of Reclamation to said defendants as set forth in this supplemental complaint in intervention on file herein, will irrevocably damage and injure the lands, water and water rights of the complainant in intervention herein, the lands and water rights of complainant in intervention Tranquillity Irrigation District, and the lands and water rights of the plaintiffs herein, and the health of inhabitants of said lands mentioned in complainant's complaint in intervention, and in complaint in intervention of said Tranquillity Irrigation District on file herein, as amended, and in plaintiffs' complaint on file herein, as amended.

V.

That complainant in intervention has demanded that the defendant officials and employees of said United States Bureau of Reclamation and the other defendants in this paragraph mentioned refrain from carrying out said illegal and unlawful storage, diversion and transportation and sale of said waters of said San Joaquin River as mentioned in this supplemental complaint in intervention, and

that said Defendant Pacific Gas and Electric Company, a corporation, and said defendants Consolidated Irrigation District, International Water District, Homeland Reclamation District No. 780, and Nunes Water District, cease taking and accepting delivery of said water of said San Joaquin River, but that said defendants have wholly failed, refused and neglected to cease or stop the illegal and unlawful sale, storage, diversion and transportation or acceptance of delivery of said waters of said San Joaquin River, as aforesaid, and threaten to, and will unless restrained by order of the above entitled Court continue to illegally sell, store, divert and transport or accept delivery of said waters of the San Joaquin River, as in this supplemental complaint in intervention and complainant's complaint in intervention, as amended, set forth, to the irreparable damage of the complainant in intervention herein. [1976]

Wherefore, complainant in intervention makes the same prayers herein as made in its complaint in intervention, on file as amended, especially that a solution be made of the use of said waters by the above entitled Court.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in
Intervention. [1977]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

AMENDMENT AND SUPPLEMENT TO COMPLAINT IN INTERVENTION OF TRANQUILLITY IRRIGATION DISTRICT

Comes now the Complainant in Intervention, the Tranquillity Irrigation District, a public corporation, for itself, and for a further, separate and third cause of action, alleges as follows:

I.

That this third cause of action is an action for a declaratory judgment as authorized by Section 2201 of Title 28 of the United States Code and is brought because there is an actual controversy now existing between the parties as hereinafter set forth and as to which controversy complainant in intervention seeks the declaratory judgment of this Court.

II.

The jurisdiction of this Court is based upon the existence of a Federal question, upon the fact that officials and employees of the United States Bureau of Reclamation and the United States of America are parties to the above entitled action and upon the ground that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs, being a controversy over irreparable damage to property rights in an amount in excess of several million dollars.

III.

Complainant in intervention realleges all of the allegations of complainant's complaint in intervention on file herein as of the date of filing the same, and realleges all of the amendments to complainant's complaint in intervention, the same as if fully set forth herein.

IV.

That the United States of America claims and contends that all of said beforementioned acts and threatened acts of said defendant officials and employees and former defendant officials and employees of said United States Bureau of Reclamation in impounding, storing, diverting, transporting, and selling said waters of said San Joaquin River, more particularly set forth and referred to in Paragraph III hereof, are lawful, legal, within the scope of the authority of their respective offices and employments and within the power and authority conferred upon defendant officials and employees of [1985] said Bureau of Reclamation by the Constitution, laws and statutes of the United States of America; that the United States of America and the other defendants contend and claim that this complainant in intervention has no right, title or interest in said waters so stored, diverted, transported and sold by said defendant officials of said United States Bureau of Reclamation or to the use of said waters of said San Joaquin River so stored, diverted, transported and sold by said defendant officials of said United States Bureau of Reclamation and that said defendant officials and employees

of said United States Bureau of Reclamation at the times set forth in Paragraph III hereof are and were the duly appointed, authorized and acting officials, agents and employees of the defendant, the United States of America; that complainant in intervention is further informed and believes, and upon such information and belief alleges that said defendant the United States of America and said other defendants claim and contend that the laws and statutes of the United States of America, which complainant in intervention in Paragraph III hereof alleges to be unconstitutional and void, are lawful, legal and constitutional statutes of said United States of America.

That the State of California, in its answer on file herein, claims to be the owner of all of the waters of said San Joaquin River (which the plaintiffs and complainants in intervention, the City of Fresno and Tranquillity Irrigation District, claim the right to the use of, as riparian, prescriptive and appropriative owners and users thereof, and as holders of first priority applications to appropriate said waters of said San Joaquin River) and that the United States stores said waters behind Friant Dam and sells, diverts and transports said waters of said San Joaquin River merely as trustee for said State of California; that complainant in intervention is informed and believes, and upon such information and belief avers that the United States of America denies all or part of said alleged right of said State of California as alleged in the answer and amended complaint in intervention of said

State of California, on file herein, which said answer and amended complaint in intervention of said [1986] State of California is here expressly referred to.

That complainant in intervention in its complaint in intervention on file herein, as amended, the complainant in intervention the said City of Fresno in its complaint in intervention on file herein, as amended, and the plaintiffs in their complaint on file herein, as amended, the defendant and complainant in intervention the said State of California, in its answer on file herein, and complaint in intervention, as amended, the defendant irrigation, water and municipal utility districts in their answers on file herein, have all prayed that the above entitled Court make a physical solution of the right to and use of the said waters of said San Joaquin River, all of which are specifically referred to; (that in this regard complainant in intervention expressly refers herein to said complainant's complaint in intervention, as amended, and to said complaint in intervention of said City of Fresno, as amended, and to plaintiffs' complaint, as amended, which are expressly made a part hereof, and to the answers of said defendant, State of California to said answer of said defendant officials and employees of said United States Bureau of Reclamation and to said answers of said defendant irrigation, water and municipal utility districts on file herein); that said defendant officials of said United States Bureau of Reclamation in their answer on file herein, have set forth a plan of physical solu-

tion (though not expressly referring to said plan as a plan of physical solution) for the use of said waters of said San Joaquin River, which they ask the above entitled Court to approve; that said foregoing plaintiffs, complainants in intervention and said defendants during the trial of said above entitled action all approved or introduced into evidence in said above entitled action different plans of physical solution for the use of waters of said San Joaquin River; that the plan of physical solution of plaintiffs and complainants in intervention, City of Fresno and Tranquillity Irrigation District is feasible, legal and should be adopted and ordered in effect by decree of the above entitled Court; that said defendant, the United States of America and other defendants herein, claim the plan of [1987] physical solution introduced in evidence herein by plaintiffs and complainants in intervention, the said City of Fresno and said Tranquillity Irrigation District, is not feasible, proper or legal, and claim it should not be adopted or ordered into effect by decree of the above entitled Court.

That the defendant, the United States of America, claims that the determination of the amount of the waters of said San Joaquin referred to in Paragraph III hereof, which this Complainant in Intervention owns, and to which it is legally entitled, the times of the use of said waters by complainant in intervention, the amount of water which should legally be allowed to flow down the San Joaquin River below Friant Dam and the amount of water which may legally be diverted, if any, from the said

San Joaquin River by the defendants in the above entitled action are matters solely for the administrative determination of the said defendant officials and employees of the United States Bureau of Reclamation and are not matters for judicial determination by the above entitled Court, all of which claims of the said defendant, the United States of America, and said other defendants in this said sentence set forth, this Complainant in Intervention generally and specifically denies; said Complainant in Intervention specifically avers that the determination of said matters is solely a matter for judicial determination by the above entitled Court.

That Complainant in intervention is informed and believes, and upon such information and belief avers that the said defendant, the United States of America, claims and contends that neither it nor the defendant officials and employees of said United States Bureau of Reclamation are legally required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, nor by any Act of Congress of the United States of America, to acquire, appropriate, purchase, store, sell or divert the waters of said San Joaquin River referred to in Paragraph III hereof in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the California Water Code, and any other laws or statutes of the State [1988] of California; that in this regard Complainant in intervention specifically avers that said defendant United States of America and said defendant officials and employees of said United States Bureau of Reclamation, to wit, the said United States of

America, are legally bound and required by said Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the Congress of the United States and by the Constitution of the United States to appropriate, purchase, divert, store, transport and sell said waters of said San Joaquin River (subject to the rights of the plaintiffs and the class they represent and the rights of the complainants in intervention, the City of Fresno and Tranquillity Irrigation District), if they are entitled to do so, only in accordance with said Article XIV, paragraph 3 of the Constitution of the State of California, said Water Code of the State of California and said other laws of the State of California in this said paragraph hereinabove referred to, and that said defendant officials and said other defendants, including the United States of America, are required to recognize and respect the property rights of the plaintiffs and the class they represent, the complainant in intervention the said Tranquillity Irrigation District, and the complainant in intervention the said City of Fresno in and to the waters and the use of said waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use and not to interfere with or obstruct such uses;

That the United States of America claims and asserts in the above entitled action that neither it nor the defendant officials of said United States Bureau of Reclamation are subject to the injunctive and mandatory processes of the above entitled

court in the above entitled action but to damages for irreparable injury to plaintiffs in respect to the herein alleged illegal use, storage, diversion, purchase, appropriation and sale of said waters of said San Joaquin River by said defendant officials and employees of said United States Bureau of Reclamation; that Complainant in intervention specifically alleges and avers that said defendant United States of America and said defendant officials and employees of said [1989] United States of America, are subject to the injunctive, mandatory and other processes, judgments and decrees of the above entitled court in the above entitled action in regard to said illegal appropriation, use, storage, purchase, diversion and sale of said waters of said San Joaquin River by said defendant officials of said United States Bureau of Reclamation as set forth in Paragraph III hereof.

The above entitled action, as amended, and the suits in intervention of said City of Fresno and Tranquillity Irrigation District as amended, and said controversies herein between the plaintiffs, the complainants in intervention, the said City of Fresno and Tranquillity Irrigation District, on the one hand, and said defendant United States of America and said other defendants on the other hand, in this said paragraph mentioned, arise out of and are for the adjudication of rights to the use of water of a river system or other source, to wit, said San Joaquin River, all as more particularly set forth and described in Paragraph III hereof, and in the complaints in intervention of said City

of Fresno and Tranquillity Irrigation District, and plaintiffs' complaint, as amended hereinbefore referred to; that complainant in intervention is informed and believes, and upon such information and belief avers that the United States claims it is in the process of acquiring water rights to said waters of said San Joaquin River involved in the above entitled action, by appropriation under state law (to wit, the laws of the State of California), by purchase, by exchange or otherwise; and that defendant United States claims the right to change point of diversion of said purchased water and to take unappropriated waters out of watershed of said river in which complainant in intervention's lands are located, and from lands immediately adjacent thereto without legal permit, and even though complainant in intervention's lands are damaged thereby and even though said unappropriated waters are necessary for beneficial uses by this complainant in intervention by reasonable methods of use on complainant in intervention's lands in said watershed and lands immediately adjacent thereto, and said United States asserts the right to refuse to store water for this complainant in intervention behind Friant Dam upon being paid for facilities rendered useless, which said claims plaintiffs and complainants in intervention deny. [1990]

V.

That a real controversy exists as aforesaid between the plaintiffs herein, the complainants in intervention herein, said City of Fresno and said

Tranquility Irrigation District on the one hand and the defendant, the United States of America and the other defendants on the other hand, as regards whether said acts and threatened acts of said defendant officials and employees of said United States Bureau of Reclamation and said former defendant officials and employees of the said United States Bureau of Reclamation mentioned in Paragraph III hereof (as officials, agents or employees of the said United States Bureau of Reclamation, to wit as officials, agents and employees of said defendant United States of America) in impounding, storing, diverting, transporting and selling said waters of said San Joaquin River are legal or illegal, lawful or unlawful, and within or in excess of the authority of their respective offices, agencies and employment and within or in excess of the lawful authority conferred upon them by the Constitution, laws and statutes of the United States (all of which acts and threatened acts have hereinbefore been specifically set forth herein and in Paragraph III hereof, and in the complaint in intervention of the City of Fresno, and in the complaint of plaintiffs as amended, that a real controversy exists as between the plaintiffs and the complainants in intervention the said City of Fresno and Tranquility Irrigation District, on the one hand, and the defendant United States of America and the other defendants herein, on the other hand, as regards the question of whether plaintiffs and said complainants in intervention the said City of Fresno and said Tranquillity Irrigation District are the owners

of and entitled to the use of said waters of said San Joaquin River so illegally stored, diverted and transported from said natural channel of said San Joaquin River by said defendant officials and employees of the said United States Bureau of Reclamation as alleged in Paragraph III hereof, and in said complaint in intervention, as amended of said City of Fresno, and in plaintiffs' complaint, as amended, on file herein [1991] (specifically referred to and made a part hereof) and as regards the amount of the waters of said San Joaquin River the plaintiffs and complainants in intervention the said City of Fresno and Tranquillity Irrigation District, are entitled to under reasonable methods of diversion and use for the beneficial purposes hereinbefore referred to and under said filings to appropriate said waters of said San Joaquin River by the said complainant in intervention the said City of Fresno, and in regard to the time for the use of said waters of said San Joaquin River by said plaintiffs and said complainants in intervention the said City of Fresno and Tranquillity Irrigation District.

That a real controversy as shown by plaintiffs' complaint, as amended, the complaints in intervention, as amended, and the answers of said defendants herein, reference to which is hereby expressly made, exists as between the plaintiffs, the complainants in intervention, the said City of Fresno and said Tranquillity Irrigation District, on one hand, and the said defendant the United States of America (as principal and employer of said defendant

officials and employees of said United States Bureau of Reclamation) and said other defendants in this said paragraph mentioned, on the other hand, regarding which said plan of physical solution offered by the parties herein is legal, lawful and practical, and which plan of physical solution, if any, should be adopted, ordered, adjudged, decreed or ordered put into effect by the above entitled Court (and if so which of the parties herein should pay for the cost and operation of the same, if any.)

That a real controversy exists between the plaintiffs, the complainants in intervention said Tranquillity Irrigation District, and said City of Fresno on the one hand, and the defendant United States of America and said other defendants on the other hand, in regard to the question as to whether the determination of the amount of water of said San Joaquin River to which plaintiffs and the class they represent, this complainant in intervention, and complainant in intervention the said City of Fresno, are entitled, and the times of use of the same and the amount [1992] of said waters of said San Joaquin River to be allowed to flow down San Joaquin River below Friant Dam for the use of the plaintiffs and the class they represent, and for the use of this Complainant in intervention, and the complainant in intervention, Tranquillity Irrigation District, is a matter of administrative determination by said defendant officials and employees and other officials of the United States Bureau of Reclamation, or is solely a matter for judicial determination by the above-entitled court.

That a real controversy exists between the plaintiffs and the class they represent and said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno on the one hand, and the said defendants on the other hand, including said defendant United States of America, as to whether the United States of America and the defendant officials and employees of said United States Bureau of Reclamation are subject to the injunctive, or mandatory processes of the above entitled court and to the decrees and judgments of this court, including any right of plaintiffs to damages for irreparable injuries, the costs of installing and operating of any plan of physical solution which the above entitled court may decree.

That a real controversy exists between the plaintiffs and the class they represent and the said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno, on the one hand, and said United States of America and the other defendants, on the other hand, as to whether said United States of America and said defendant officials of said United States Bureau of Reclamation in this said action named are required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the United States of America, and by the Constitution of the United States of America, to acquire, appropriate, purchase, divert, store or transport the waters of the San Joaquin River in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the Water Code

of the State of California and the other laws and statutes of said State of California and as to whether said defendant United States of America and said defendant officials and employees of said United States Bureau of Reclamation [1993] are required to recognize and respect the rights of said complainants in intervention, the said City of Fresno and Tranquillity Irrigation District, and the rights of said plaintiffs herein, in and to the beneficial use of the waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use.

That a real controversy exists between plaintiffs and complainants in intervention said City of Fresno and Tranquillity Irrigation District and said United States of America, and other defendants as to the right of defendant United States to illegally divert said water, to illegally take said unappropriated waters, and to refuse to store the same as above alleged.

That the words "other defendants" wherever used in this Amendment and Supplement to Complaint in Intervention are intended to and do include the defendant the State of California and the defendant, the People of the State of California.

Wherefore, complainant in intervention demands that the Court adjudge and decree in addition to the matters set forth in the prayer of complainant's complaint in intervention, as amended herein:

(1) Declare, adjudge and decree the disputed questions of law and fact herein as specifically set

forth in this third cause of action of said complainant's complaint in intervention.

(2) Declare, adjudge and decree the rights of the complainant in intervention as against all other defendants, as set forth in this said third cause of action, in and to the waters and to the use of the waters of the San Joaquin River.

(3) That in regard to the prayer for a physical solution, as prayed for in plaintiffs' complaint on file herein, as amended, that the Court adopt plaintiffs' plan of physical solution and adjudge and decree that plaintiffs' plan of physical solution as to the right to and use of the waters of said San Joaquin River heretofore introduced in evidence in the above entitled action, is [1994] feasible, proper and legal, and decree that the same be constructed and placed in operation and thereafter operated, and that all or part of the defendants pay for the cost for the installation and operation of the same.

(4) That the Court as part of any decree or judgment hereinafter declared, issue the necessary mandatory, injunctive or other process necessary to carry out any judgment herein entered or decreed by the above entitled Court.

(5) That the plaintiffs recover their costs.

(6) For such other and further relief as is proper in the premises.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in
Intervention. [1995]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

Comes Now the complainant in intervention, the City of Fresno, a municipal corporation, and brings this supplemental complaint in intervention in the above entitled action, and alleges as follows:

I.

That since the filing of the complaint in intervention herein, the following material facts, as alleged in Paragraphs II, III, IV and V hereof, have occurred.

II.

That on or about the 1st day of July, 1953, as alleged in complainant's complaint in intervention on file herein, as amended, Clyde Spencer was appointed Supervising Engineer, California Projects, United States Bureau of Reclamation, succeeding the former defendant Richard Boke, who resigned as Regional Director and as Regional Director, Region 2, United States Bureau of Reclamation on or about said 1st day of July, 1953, as alleged in complainant's complaint in intervention on file herein, as amended; that defendant Clyde Spencer, since on or about July 1st, 1953, and at all times herein mentioned has been, was and is the Supervising Engineer, California Projects, United States Bureau of Reclamation and complainant in intervention is informed and believes, and upon such information and belief alleges that the said

Clyde Spencer has also at various times herein mentioned and in complainant's complaint in intervention on file herein, as amended, mentioned, since said 1st day of July, 1953, acted under the name and title of Regional Director, United States Bureau of Reclamation, under the name and title of Regional Director, Region 2, United States Bureau of Reclamation, and under the name and title of Supervising Engineer, United States Bureau of Reclamation; that the said defendant, Clyde Spencer, irrespective of the title or the office which he held, in his official capacities above named had, and has at all times herein mentioned substantially the same powers and duties as his predecessor, Richard Boke, had in his official capacities hereinabove mentioned; that the said Clyde Spencer, individually and in his foregoing official [1999] capacities since his said appointment, has adopted, adopts, continues and threatens to adopt and to continue the illegal, unlawful acts and acts in excess of the authority of his office and employment as regards the illegal storage, diversion, transportation and sale of the waters of the San Joaquin River set forth in complainant's complaint in intervention, as amended, that his predecessor in office, the said former defendant, Richard Boke, individually and as said Regional Director, Region 2 of said United States Bureau of Reclamation adopted continued and threatened to continue and adopt, all as alleged in complainant's complaint in intervention on file herein, as amended, reference to which is herein expressly made, and that since his said appointment

on or about July 1, 1953, the said Clyde Spencer, individually and in his foregoing official capacities, adopts, has adopted, continues to adopt and threatens to adopt the illegal actions which the said former defendant Richard Boke individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred by complainant in intervention to be in violation of the Constitution of the United States, which said laws and statutes are more particularly set forth in complainant's complaint in intervention on file herein, as amended, reference to which is hereby expressly made and which complaint in intervention, as amended, is incorporated herein;

That on or about the 6th day of November, 1953, as alleged in complainant's complaint in intervention on file herein, as amended, the said defendant, Edwin F. Sullivan was appointed Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, succeeding the former defendant, Jack Rodner, as Fresno District Manager, United States Bureau of Reclamation, who resigned as Fresno District Manager, United States Bureau of Reclamation on or about the said 6th day of November, 1953; that defendant Edwin F. Sullivan at all times herein mentioned since on or about the 6th day of November, 1953, has been the Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, and at all times since on or about the said 6th day of November, 1953, irrespective [2000] of the title or the office which he held, has had substantially the same

powers and duties as the former defendant, Jack Rodner, Fresno District Manager of the Fresno District Office of the United States Bureau of Reclamation (excepting the operation of the Delta-Mendota Canal) with immediate supervision and control over Friant Dam, the Friant-Kern Canal, the Friant-Madera Canal, and discharges and releases of water from the Friant Dam into the San Joaquin River under the general supervision and direction of the said defendant, Clyde Spencer, in his official capacities and employment above mentioned; that the said Edwin F. Sullivan, individually, and in his official capacities above named, has adopted, continues and threatens to adopt the same illegal actions and acts in excess of the authority of his office and employment as his predecessor in office and employment, the said Jack Rodner, individually and officially, adopted, continued and threatened to adopt; that the said defendant, Edwin F. Sullivan, individually and in his official capacities above named, adopted, continued and threatens to adopt the same illegal actions which the said former defendant, Jack Rodner, individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred to be unconstitutional in complainant's complaint in intervention on file herein, as amended; that there is substantial need for continuing this said action against said Clyde Spencer and Edwin F. Sullivan individually and in their official capacities as alleged in complainant's complaint in intervention on file herein, as amended.

That defendant Martin Blote is and was at all times herein mentioned the Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, and complainant in intervention is informed and believes, and upon such information and belief avers that the said Martin Blote is and has also operated at all times herein mentioned under the name and title of Regional Water Master of the said United States Bureau of Reclamation, with authority over the operation of the projects of the Central Valley Plan of the United States Bureau of Reclamation under the general supervision and [2001] direction of the said defendant Clyde Spencer and his predecessor in office, in their official capacities and employment, all as aforesaid.

That Pacific Gas and Electric Company, a corporation, is and was at all times herein mentioned and in the amended complaint in intervention on file herein mentioned, a corporation duly formed, organized and existing under and by virtue of the laws of the State of California, and is and was at all times herein mentioned and in the amended complaint in intervention on file herein mentioned, conducting business and operating a public utility business for the sale of electrical energy and natural and artificial gas within said United States Judicial District for Southern California and within the jurisdiction of the above entitled Court;

That Consolidated Irrigation District; International Water District, Homeland Reclamation District No. 780, and Nunes Water District are and

were at all times herein mentioned public corporations, duly formed, organized and existing under and by virtue of the laws of the State of California, and are and were at all times herein mentioned operating a water distribution business in said United States Judicial District of Southern California and within the jurisdiction of the above entitled Court.

III.

That on or about the 25th day of May, 1954, defendant Clyde Spencer, purporting to act as Regional Director, Region 2, of the United States Bureau of Reclamation (and complainant in intervention is informed and believes, and upon such information and belief alleges, also as Regional Director of said United States Bureau of Reclamation and as California Projects Engineer of said United States Bureau of Reclamation) and said defendant, Pacific Gas and Electric Company, a corporation, signed and mutually delivered, the one to the other, a purported written contract purporting to sell and deliver by means of diversion at Friant Dam through the Friant-Kern Canal, to said defendant, Pacific Gas and Electric Company a minimum of 130,000 acre-feet of the waters of the San Joaquin River [2002] during a four year period beginning March 1, 1954, and ending on or about February 28, 1958, for the sum of $3.50 per acre-foot, said water to be diverted out of Friant Dam through the Friant-Kern Canal of the United States Bureau of Reclamation and delivered to defendant, Pacific Gas and Electric Company at a point in

Fresno County, California where said Friant-Kern Canal intersects the Kings River in said County; that said purported contract provides in addition thereto that additional waters of said San Joaquin River in addition to said 130,000 acre feet of said waters may be purchased by defendant Pacific Gas and Electric Company, a corporation, and delivered in a similar manner upon mutual agreement of the defendant, Pacific Gas and Electric Company, a corporation, and defendant Clyde Spencer in his aforesaid capacities;

That complainant in intervention is informed and believes, and upon such information and belief alleges that on or about the 25th day of May, 1954, an additional purported written contract between said defendant official of the United States Bureau of Reclamation, the said Clyde Spencer, purporting to act as Regional Director, Region 2 of the United States Bureau of Reclamation, (and complainant in intervention is informed and believes, and upon such information and belief avers, also as Supervising Engineer, California Projects, United States Bureau of Reclamation and as Regional Director, United States Bureau of Reclamation,) and the defendant, Pacific Gas and Electric Company was illegally and unlawfully made, executed and mutually delivered, the one to the other, whereby said Pacific Gas and Electric Company purportedly purchased an additional 3,000 acre-feet annually of the waters of the San Joaquin River at a price of approximately $3.50 per acre foot, to be illegally delivered by said defendant officials and employees of said

United States Bureau of Reclamation to said defendant Pacific Gas and Electric Company through said Friant-Kern Canal at a point in Kern County, California, near the terminus of the Friant-Kern Canal, which said purported written contract for the purchase of said 3,000 acre-feet annually of said waters of said San Joaquin River, complainant in intervention is [2003] so informed and believes, and upon such information and belief allege was and is to continue for approximately 40 years thereafter; that all of said waters of said San Joaquin River which have been or will be so illegally and unlawfully stored, diverted, transported and purportedly sold to said defendant, Pacific Gas and Electric Company, the complainant, the complainant in intervention Tranquillity Irrigation District and the plaintiffs as hereinafter set forth, are and were entitled to the reasonable, beneficial use of, under reasonable methods of diversion and use and below Friant Dam for the purposes all as set forth in the complainant's complaint in intervention on file herein, as amended, and in the complaint in intervention of said Tranquillity Irrigation District, as amended, and said plaintiffs' complaint, as amended, reference to which is hereby expressly made, and the allegations of complainant's complaint in intervention on file herein and amendments thereto are expressly made a part hereof, as aforesaid.

That complainant in intervention is informed and believes, and upon such information and belief avers that all of said waters of the said San Joaquin River so sold, stored, diverted, transported

and delivered, or intended and threatened to be hereafter illegally stored, sold, transported and delivered by said beforementioned defendant officials and employees of said United States Bureau of Reclamation, as hereinabove set forth under said beforementioned purported written contracts with said defendant Pacific Gas and Electric Company, a corporation, are to be used for industrial purposes, to-wit, the generation of electrical energy, by direct use of the same, by means of the exchange of said waters of said San Joaquin River for other waters or by means of supplying percolating waters to water stratas from which Pacific Gas and Electric Company pumps water for said industrial purposes.

That complainant in intervention is informed and believes, and upon such information and belief avers that sometime during the year 1954, the exact time being unknown to this complainant in intervention, said defendant Clyde Spencer, purporting to act as Regional [2004] Director, Region 2, United States Bureau of Reclamation, (and complainant in intervention is informed and believes, and upon such information and belief alleges, as Supervising Engineer, California Projects, United States Bureau of Reclamation, and as Regional Director of said United States Bureau of Reclamation), illegally and unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, made and entered into a purported written contract with defendant Consolidated Irrigation District, a public corporation,

which was mutually signed, executed and delivered the one to the other, whereby said Consolidated Irrigation District, a public corporation, purportedly purchased approximately 30,000 acre-feet of water of said San Joaquin River for $3.50 an acre foot to be and which was delivered to said Consolidated Irrigation District during the year 1954 at a point in Fresno County, California, where the said Friant-Kern Canal intersects the Kings River in said County for agricultural purposes.

That complainant in intervention is informed and believes and upon such information and belief avers, that said defendant Clyde Spencer in his aforesaid capacities as an official of the United States Bureau of Reclamation, sometime during the year 1954, the exact time being unknown to the complainant in intervention, illegally, unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, and in excess of the authority conferred upon him by the laws and statutes of the United States, made and entered into written contracts with International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public corporation, which were signed and mutually delivered, the one to the other, for the sale and delivery of certain unknown amounts of waters of said San Joaquin River to said defendant public corporations, the said International Water District, Homeland Reclamation District No. 780, and Nunes Water District, to be diverted at Friant Dam through

the Friant-Kern Canal, at prices and at points [2005] of delivery now unknown to this complainant in intervention, and complainant in intervention is informed and believes, and upon such information and belief avers that the defendant officials and employees of said United States Bureau of Reclamation are threatening to illegally and unlawfully store, sell, deliver and transport additional waters of said San Joaquin River to said defendant public corporations heretofore mentioned, in the same manner, except as to length of time and points of delivery, as said defendant officials of said United States Bureau of Reclamation are threatening to illegally store, sell, transport and deliver to the defendant irrigation and municipal utility districts mentioned in complainant's complaint in intervention, as amended, all as set forth in said complainant's complaint in intervention as amended.

That all of said waters of said San Joaquin River covered by said purported illegal written contracts hereinabove mentioned were, have been, will be, are intended to be, and are threatened to be illegally and unlawfully stored, sold, diverted, transported by said aforementioned defendant officials and employees of the United States Bureau of Reclamation in the same manner except as to points of delivery, length of time of delivery, as said defendant officials and employees of said United States Bureau of Reclamation have and intend to illegally store, divert and transport other waters of the San Joaquin River at and from a point near Friant Dam to the other defendants named in complain-

ant's complaint in intervention on file herein, as amended, the allegations of which are specifically referred to and have heretofore been incorporated herein.

IV.

That said defendant officials and employees of said United States Bureau of Reclamation have, intend to and threaten to continue to so illegally store, sell, divert and transport all of said waters of said San Joaquin River mentioned in said beforementioned and in this paragraph mentioned purported written contracts with said defendant public districts and said defendant Pacific Gas and Electric Company, a corporation (excepting defendant International [2006] Water District, a public corporation) as heretofore stated, entirely out of the watershed of the San Joaquin River above the intersection of said watershed of the San Joaquin River with Fresno Slough about which the lands of plaintiffs are located, unless restrained by order of the above entitled Court, to the irreparable damage of complainant in intervention as hereinafter set forth.

V.

That the complainants in intervention the City of Fresno and Tranquillity Irrigation District, and the plaintiffs are entitled to the use of all of said waters of said San Joaquin River covered by the terms of the hereinabove mentioned purported contracts, as riparian, prescriptive or appropriative owners and users of the waters of the San Joaquin River, and as owners of lands overlying subterra-

nean streams and water stratas fed and supplied by said San Joaquin River, as more particularly set forth and described in complainant's complaint in intervention on file herein, as amended, and as holders and owners of first priority filings on said waters of said river under the Constitution, laws and statutes of the State of California, and under the laws and statutes of the United States for the appropriation of said waters of said San Joaquin River, as set forth in the complaint in intervention of said City of Fresno herein, which said waters complainant in intervention and said complainant in intervention Tranquillity Irrigation District and the plaintiffs herein have used, now use and intend to use or will use in the future legally and lawfully under reasonable methods of diversion and use for beneficial purposes, to-wit, for agricultural, domestic and municipal purposes, all as set forth in complainant's complaint in intervention as amended on file herein, in the complaint in intervention as amended of Tranquillity Irrigation District and in plaintiffs' complaint, as amended, on file herein, reference to all of which is and has heretofore been expressly made as herein set forth; that said illegal storage, diversion, sale, transportation, and said intended and threatened illegal storage, sale, diversion and transportation and use of said waters of said San Joaquin River [2007] heretofore made or threatened to be made by said aforesaid defendant officials and employees of said United States Bureau of Reclamation to said defendants as set forth in this supplemental complaint in intervention on

file herein, will irrevocably damage and injure the lands, water and water rights of the complainant in intervention herein, the lands and water rights of complainant in intervention, said City of Fresno, and the lands and water rights of the plaintiffs herein, and the health of inhabitants of said lands mentioned in complainant's complaint in intervention, and in complaint in intervention of said City of Fresno on file herein, as amended, and in plaintiffs' complaint on file herein, as amended.

VI.

That complainant in intervention has demanded that the defendant officials and employees of said United States Bureau of Reclamation and the other defendants in this paragraph mentioned refrain from carrying out said illegal and unlawful storage, diversion and transportation and sale of said waters of said San Joaquin River as mentioned in this supplemental complaint in intervention, and that said defendant Pacific Gas and Electric Company, a corporation, and said defendants Consolidated Irrigation District, International Water District, Homeland Reclamation District No. 780, and Nunes Water District, cease taking and accepting delivery of said water of said San Joaquin River, but that said defendants have wholly failed, refused and neglected to cease or stop the illegal and unlawful sale, storage, diversion and transportation or acceptance of delivery of said waters of said San Joaquin River, as aforesaid, and threaten to, and will unless restrained by order of the above

entitled Court continue to illegally sell, store, divert and transport or accept delivery of said waters of the San Joaquin River, as in this supplemental complaint in intervention and complainant's complaint in intervention, as amended, set forth, to the irreparable damage of the complainant in intervention herein. [2008]

Wherefore, complainant in intervention makes the same prayers herein as made in its complaint in intervention, on file as amended, especially that a solution be made of the use of said waters by the above entitled Court.

/s/ C. M. OZIAS,
/s/ CLAUDE L. ROWE,
Attorneys for Complainant in Intervention. [2009]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

AMENDMENT AND SUPPLEMENT TO COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO

Comes Now the Complainant in Intervention, the City of Fresno, a municipal corporation, for itself, and for a further, separate and third cause of action, alleges as follows:

I.

That this third cause of action is an action for a declaratory judgment as authorized by Section 2201

of Title 28 of the United States Code and is brought because there is an actual controversy now existing between the parties as hereinafter set forth and as to which controversy complainant in intervention seeks the declaratory judgment of this Court.

II.

The jurisdiction of this Court is based upon the existence of a Federal question, upon the fact that officials and employees of the United States Bureau of Reclamation and the United States of America are parties to the above entitled action and upon the ground that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs, being a controversy over irreparable damage to property rights in an amount in excess of several million dollars.

III.

Complainant in intervention realleges all of the allegations of complainant's complaint in intervention on file herein as of the date of filing the same, and realleges all of the amendments to complainant's complaint in intervention, the same as if fully set forth herein.

IV.

That the United States of America claims and contends that all of said beforementioned acts and threatened acts of said defendant officials and employees and former defendant officials and employees of said United States Bureau of Reclamation in impounding, storing, diverting, transporting, and selling said waters of said San Joaquin River, more

particularly set forth and referred to in Paragraph III hereof, are lawful, legal, within the scope of the authority of their respective offices and employments and within the power and authority conferred upon defendant officials and employees of [2013] said Bureau of Reclamation by the Constitution, laws and statutes of the United States of America; that the United States of America and the other defendants contend and claim that this complainant in intervention has no right, title or interest in said waters so stored, diverted, transported and sold by said defendant officials of said United States Bureau of Reclamation or to the use of said waters of said San Joaquin River so stored, diverted, transported and sold by said defendant officials of said United States Bureau of Reclamation and that said defendant officials and employees of said United States Bureau of Reclamation at the times set forth in Paragraph III hereof are and were the duly appointed, authorized and acting officials, agents and employees of the defendant, the United States of America; that complainant in intervention is further informed and believes, and upon such information and belief alleges that said defendant the United States of America and said other defendants claim and contend that the laws and statutes of the United States of America, which complainant in intervention in Paragraph III hereof alleges to be unconstitutional and void, are lawful, legal and constitutional statutes of said United States of America.

That the State of California, in its answer on file

herein, claims to be the owner of all of the waters of said San Joaquin River (which the plaintiffs and complainants in intervention, the City of Fresno and Tranquillity Irrigation District, claim the right to the use of, as riparian, prescriptive and appropriative owners and users thereof, and as holders of first priority applications to appropriate said waters of said San Joaquin River) and that the United States stores said waters behind Friant Dam and sells, diverts and transports said waters of said San Joaquin River merely as trustee for said State of California; that complainant in intervention is informed and believes, and upon such information and belief avers that the United States of America denies all or part of said alleged right of said State of California as alleged in the answer and amended complaint in intervention of said State of California, on file herein, which said answer and amended complaint in intervention of said [2014] State of California is here expressly referred to.

That Complainant in intervention in its complaint in intervention on file herein, as amended, the complainant in intervention, the said Tranquillity Irrigation District, in its Complaint in intervention on file herein, as amended, and the plaintiffs in their complaint on file herein, as amended the defendant and complainant in intervention the said State of California, in its answer on file herein and complaint in intervention, as amended, the defendant irrigation, water and municipal utility districts in their answers on file herein, have all prayed that the above entitled Court make a physical solution of the

right to and use of the said waters of said San Joaquin River, all of which are specifically referred to; (that in this regard complainant in intervention expressly refers herein to said complainant's complaint in intervention, as amended, and to said complaint in intervention of said Tranquillity Irrigation District, as amended, and to plaintiffs' complaint, as amended, which are expressly made a part hereof, and to the answers of said defendant State of California, to said answer of said defendant officials and employees of said United States Bureau of Reclamation and to said answers of said defendant irrigation, water and municipal utility districts on file herein); that said defendant officials of said United States Bureau of Reclamation in their answer on file herein, have set forth a plan of physical solution (though not expressly referring to said plan as a plan of physical solution) for the use of said waters of said San Joaquin River, which they ask the above entitled Court to approve; that said foregoing plaintiffs, complainants in intervention and said defendants during the trial of said above entitled action all approved or introduced into evidence in said above entitled action different plans of physical solution for the use of waters of said San Joaquin River; that the plan of physical solution of the plaintiffs and complainants in intervention said City of Fresno and Tranquillity Irrigation District is feasible, legal and should be adopted and ordered into effect by decree of the above entitled Court; that said defendant, the United States of America and the other defendants herein, claim that

the plan of [2015] physical solution introduced in evidence herein by plaintiffs and complainants in intervention, the said City of Fresno and said Tranquillity Irrigation District, is not feasible, proper or legal, and claim it should not be adopted or ordered into effect by decree of the above entitled Court.

That the defendant, the United States of America, claims that the determination of the amount of the waters of said San Joaquin referred to in Paragraph III hereof, which this Complainant in Intervention owns, and to which it is legally entitled, the times of the use of said waters by complainant in intervention, the amount of water which should legally be allowed to flow down the San Joaquin River below Friant Dam and the amount of water which may legally be diverted, if any, from the said San Joaquin River by the defendants in the above entitled action are matters solely for the administrative determination of the said defendant officials and employees of the United States Bureau of Reclamation and are not matters for judicial determination by the above entitled Court, all of which claims of the said defendant, the United States of America, and said other defendants in this said sentence set forth, this Complainant in Intervention generally and specifically denies; said Complainant in intervention specifically avers that the determination of said matters is solely a matter for judicial determination by the above entitled Court.

That Complainant in intervention is informed and believes, and upon such information and belief avers

that the said defendant, the United States of America, claims and contends that neither it nor the defendant officials and employees of said United States Bureau of Reclamation are legally required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, nor by any Act of Congress of the United States of America, to acquire, appropriate, purchase, store, sell or divert the waters of said San Joaquin River referred to in Paragraph III hereof in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the California Water Code, and any any other laws or statutes of the State [2016] of California; that in this regard Complainant in intervention specifically avers that said defendant United States of America, and said defendant officials and employees of said United States Bureau of Reclamation, to-wit, the said United States of America, are legally bound and required by said Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the Congress of the United States and by the Constitution of the United States to appropriate, purchase, divert, store, transport and sell said waters of said San Joaquin River (subject to the rights of the plaintiffs and the class they represent and the rights of the complainants in intervention, the City of Fresno and Tranquillity Irrigation District), if they are entitled to do so, only in accordance with said Article XIV, paragraph 3 of the Constitution of the State of California, said Water Code of the State of California and said other laws

of the State of California in this said paragraph hereinabove referred to, and that said defendant officials and said other defendants, including the United States of America, are required to recognize and respect the property rights of the plaintiffs and the class they represent, the complainant in intervention the said Tranquillity Irrigation District, and the complainant in intervention the said City of Fresno in and to the waters and the use of said waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use and not to interfere with or obstruct such uses;

That the United States of America claims and asserts in the above entitled action that neither it nor the defendant officials of said United States Bureau of Reclamation are subject to the injunctive and mandatory processes of the above entitled court in the above entitled action but to damages for irreparable injury to plaintiffs in respect to the herein alleged illegal use, storage, diversion, purchase, appropriation and sale of said waters of said San Joaquin River by said defendant officials and employees of said United States Bureau of Reclamation; that Complainant in intervention specifically alleges and avers that said defendant United States of America and said defendant officials and employees of said [2017] United States of America, are subject to the injunctive, mandatory and other processes, judgments and decrees of the above entitled court in the above entitled action in regard to said illegal appropriation, use, storage, purchase, diversion and sale of said waters of said San

Joaquin River by said defendant officials of said United States Bureau of Reclamation as set forth in Paragraph III hereof.

The above entitled action, as amended, and the suits in intervention of said City of Fresno and Tranquillity Irrigation District as amended, and said controversies herein between the plaintiffs, the complainants in intervention, the said City of Fresno and Tranquillity Irrigation District, on the one hand, and said defendant United States of America and said other defendants on the other hand, in this said paragraph mentioned, arise out of and are for the adjudication of rights to the use of water of a river system or other source, to-wit, said San Joaquin River, all as more particularly set forth and described in Paragraph III hereof, and in the complaints in intervention of said City of Fresno and Tranquillity Irrigation District, and plaintiffs' complaint, as amended hereinbefore referred to; that complainant in intervention is informed and believes, and upon such information and belief avers that the United States claims it is in the process of acquiring water rights to said waters of said San Joaquin River involved in the above entitled action, by appropriation under state law (to-wit, the laws of the State of California), by purchase, by exchange or otherwise; and that defendant United States claims the right to change point of diversion of said purchased water and to take unappropriated waters out of watershed of said river in which complainant in intervention's lands are located, and from lands immediately adjacent

thereto without legal permit, and even though complainant in intervention's lands are damaged thereby and even though said unappropriated waters are necessary for beneficial uses by this complainant in intervention by reasonable methods of use on complainant in intervention's lands in said watershed and lands immediately adjacent thereto, and said United States asserts the right to refuse to store water for this complainant in intervention behind Friant Dam upon being paid for facilities rendered useless, which said claims plaintiffs and complainants in intervention deny. [2018]

V.

That a real controversy exists as aforesaid between the plaintiffs herein, the complainants in intervention herein, said City of Fresno and said Tranquillity Irrigation District on the one hand and the defendant the United States of America and the other defendants on the other hand, as regards whether said acts and threatened acts of said defendant officials and employees of said United States Bureau of Reclamation and said former defendant officials and employees of the said United States Bureau of Reclamation mentioned in Paragraph III hereof (as officials, agents or employees of the said United States Bureau of Reclamation, to-wit as officials, agents, and employees of said defendant United States of America) in impounding, storing, diverting, transporting and selling said waters of said San Joaquin River are legal or illegal, lawful or unlawful, and within or in excess of

the authority of their respective offices, agencies and employment and within or in excess of the lawful authority conferred upon them by the Constitution, laws and statutes of the United States * * * (all of which acts and threatened acts have hereinbefore been specifically set forth herein and in Paragraph III hereof, and in the complaint in intervention of Tranquillity Irrigation District, and in the complaint of plaintiffs as amended, that a real controversy exists as between the plaintiffs and the complainants in intervention the said City of Fresno and Tranquillity Irrigation District, on the one hand, and the defendant United States of America and the other defendants herein, on the other hand, as regards the question of whether plaintiffs and said complainants in intervention the said City of Fresno and said Tranquillity Irrigation District are the owners of and entitled to the use of said waters of said San Joaquin River so illegally stored, diverted and transported from said natural channel of said San Joaquin by said defendant officials and employees of the said United States Bureau of Reclamation as alleged in Paragraph III hereof, and in said complaint in intervention, as amended of said Tranquillity Irrigation District, and in plaintiffs' complaint, as amended, [2019] (specifically referred to and made a part hereof) and as regards the amount of the waters of said San Joaquin River the plaintiffs and complainants in intervention the said City of Fresno and Tranquillity Irrigation District, are entitled to under reasonable methods of diversion and use for the beneficial pur-

poses hereinbefore referred to and under said filings to appropriate said waters of said San Joaquin River by this said complainant in intervention, the said City of Fresno, and in regard to the time for the use of said waters of said San Joaquin River by said plaintiffs and said complainants in intervention the said City of Fresno and Tranquillity Irrigation District.

That a real controversy as shown by plaintiffs' complaint, as amended, the complaints in intervention, as amended, and the answers of said defendants herein, reference to which is hereby expressly made, exists as between the plaintiffs, the complainants in intervention the said City of Fresno and said Tranquillity Irrigation District, on one hand, and the said defendant the United States of America (as principal and employer of said defendant officials and employees of said United States Bureau of Reclamation) and said other defendants in this said paragraph mentioned, on the other hand, regarding which said plan of physical solution offered by the parties herein is legal, lawful and practical, and which plan of physical solution, if any, should be adopted, ordered, adjudged, decreed or ordered put into effect by the above entitled Court (and if so which of the parties herein should pay for the cost and operation of the same, if any).

That a real controversy exists between the plaintiffs, the complainants in intervention, said Tranquillity Irrigation District, and said City of Fresno on the one hand, and the defendant United States

of America and said other defendants on the other hand, in regard to the question as to whether the determination of the amount of water of said San Joaquin River to which plaintiffs and the class they represent, this complainant in intervention, and complainant-in intervention, the said Tranquillity Irrigation District, are entitled, and the times of use of the same and the amount [2020] of said waters of said San Joaquin River to be allowed to flow down San Joaquin River below Friant Dam for the use of the plaintiffs and the class they represent, and for the use of this Complainant in intervention, and the complainant in intervention Tranquillity Irrigation District, is a matter of administrative determination by said defendant officials and employees and other officials of the United States Bureau of Reclamation, or is solely a matter for judicial determination by the above-entitled court.

That a real controversy exists between the plaintiffs and the class they represent and said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno on the one hand, and the said defendants on the other hand, including said defendant United States of America, as to whether the United States of America and the defendant officials and employees of said United States Bureau of Reclamation are subject to the injunctive, or mandatory processes of the above entitled court and to the decrees and judgments of this court, including any right of plaintiffs to damages for irreparable injuries, the costs of installing

and operating of any plan of physical solution which the above entitled court may decree.

That a real controversy exists between the plaintiffs and the class they represent and the said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno, on the one hand, and said United States of America and the other defendants, on the other hand, as to whether said United States of America and said defendant officials of said United States Bureau of Reclamation in this said action named are required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the United States of America, and by the Constitution of the United States of America, to acquire, appropriate, purchase, divert, store or transport the waters of the San Joaquin River in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the Water Code of the State of California and the other laws and statutes of said State of California and as to whether said defendant United States of America and said defendant officials and employees of said United States Bureau of Reclamation [2021] are required to recognize and respect the rights of said complainants in intervention, the said City of Fresno and Tranquillity Irrigation District, and the rights of said plaintiffs herein, in and to the beneficial use of the waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use.

That a real controversy exists between plaintiffs

and complainants in intervention said City of Fresno and Tranquillity Irrigation District and said United States of America, and other defendants as to the right of defendant United States to illegally divert said water, to illegally take said unappropriated waters, and to refuse to store the same as above alleged.

That the words "other defendants" wherever used in this Amendment and Supplement to Complaint in Intervention are intended to and do include the defendant the State of California and the defendant, the People of the State of California.

Wherefore, complainant in intervention demands that the Court adjudge and decree in addition to the matters set forth in the prayer of complainant's complaint in intervention, as amended herein:

(1) Declare, adjudge and decree the disputed questions of law and fact herein as specifically set forth in this third cause of action of said complainant's complaint in intervention.

(2) Declare, adjudge and decree the rights of the complainant in intervention as against all other defendants, as set forth in this said third cause of action, in and to the waters and to the use of the waters of the San Joaquin River.

(3) That in regard to the prayer for a physical solution, as prayed for in plaintiffs' complaint on file herein, as amended, that the Court adopt plaintiffs' plan of physical solution and adjudge and decree that plaintiffs' plan of physical solution as to the right to and use of the waters of said San

Joaquin River heretofore introduced in evidence in the above entitled action, is [2022] feasible, proper and legal, and decree that the same be constructed and placed in operation and thereafter operated, and that all or part of the defendants pay for the cost for the installation and operation of the same.

(4) That the Court as part of any decree or judgment hereinafter declared, issue the necessary mandatory, injunctive or other process necessary to carry out any judgment herein entered or decreed by the above entitled Court.

(5) That the plaintiffs recover their costs.

(6) For such other and further relief as is proper in the premises.

/s/ C. M. OZIAS,
/s/ CLAUDE L. ROWE,
Attorneys for Complainant in Intervention. [2023]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL COMPLAINT [2029]

Come now the above named Plaintiffs, for themselves, and for the members of the class they represent, and bring this supplemental complaint in the above entitled action, and allege as follows:

I.

That since the filing of the original complaint herein, the following material facts, as alleged in Paragraphs II, III, IV and V hereof, have occurred.

II.

That on or about the 1st day of July, 1953, as alleged in plaintiffs' complaint on file herein, as amended, Clyde Spencer was appointed Supervising Engineer, California Projects, United States Bureau of Reclamation, succeeding the former defendant Richard Boke, who resigned as Regional Director and as Regional Director, Region 2, United States Bureau of Reclamation on or about said 1st day of July, 1953, as alleged in plaintiffs' complaint on file herein, as amended; that defendant Clyde Spencer, since on or about July 1st, 1953, and at all times herein mentioned has been, was and is the Supervising Engineer, California Projects, United States Bureau of Reclamation, and plaintiffs are informed and believe, and upon such information and belief allege that the said Clyde Spencer has also at various times herein mentioned, and in plaintiffs' complaint on file herein, as amended, mentioned, since said 1st day of July, 1953, acted under the name and title of Regional Director, United States Bureau of Reclamation, under the name and title of Regional Director, Region 2, United States Bureau of Reclamation, and under the name and title of Supervising Engineer, United States Bureau of Reclamation; that the said de-

fendant, Clyde Spencer, irrespective of the title or the office which he held, in his official capacities above named had, and has, at all times herein mentioned substantially the same powers and duties as his predecessor, Richard Boke, had in his official capacities hereinabove mentioned; that the said Clyde Spencer, individually and in his foregoing official capacities since his said appointment, has adopted, adopts, continues and threatens to adopt and to continue the illegal, unlawful acts and [2031] acts in excess of the authority of his office and employment as regards the illegal storage, diversion, transportation and sale of waters of the San Joaquin River set forth in plaintiffs' complaint, as amended; that his predecessor in office, the said former defendant, Richard Boke, individually and as said Regional Director, Region 2 of said United States Bureau of Reclamation, adopted, continued and threatened to continue and adopt, all as alleged in plaintiffs' complaint on file herein, as amended, reference to which is herein expressly made, and that since his said appointment on or about July 1, 1953, the said Clyde Spencer, individually and in his foregoing official capacities, adopts, has adopted, continues to adopt and threatens to adopt the illegal actions which the said former defendant Richard Boke individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred by plaintiffs to be in violation of the Constitution of the United States, which said laws and statutes are more particularly set forth in plaintiffs' complaint on file herein, as amended, ref-

erence to which is hereby expressly made and which complaint, as amended, is incorporated herein;

That on or about the 6th day of November, 1953, as alleged in plaintiffs' complaint on file herein, as amended, the said defendant, Edwin F. Sullivan was appointed Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, succeeding the former defendant, Jack Rodner, as Fresno District Manager, United States Bureau of Reclamation, who resigned as Fresno District Manager, United States Bureau of Reclamation on or about the said 6th day of November, 1953; that defendant Edwin F. Sullivan at all times herein mentioned since on or about the 6th day of November, 1953, has been the Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, and at all times since on or about the said 6th day of November, 1953, irrespective of the title or the office which he held, has had substantially the same powers and duties as the former defendant, Jack Rodner, Fresno District Manager of the Fresno District Office of the United States [2032] Bureau of Reclamation (excepting the operation of the Delta-Mendota Canal) with immediate supervision and control over Friant Dam, the Friant-Kern Canal, the Friant-Madera Canal, and discharges and releases of water from the Friant Dam into the San Joaquin River under the general supervision and direction of the said defendant Clyde Spencer, in his official capacities and employment above mentioned; that the said Edwin F. Sul-

livan, individually, and in his official capacities above named, has adopted, continues and threatens to adopt the same illegal actions and acts in excess of the authority of his office and employment as his predecessor in office and employment, the said Jack Rodner, individually and officially, adopted, continued and threatened to adopt; that the said defendant, Edwin F. Sullivan, individually, and in his official capacities above named, adopted, continued and threatens to adopt the same illegal actions which the said former defendant, Jack Rodner, individually and officially adopted and carried out in enforcing the laws and statutes of the United States averred to be unconstitutional in plaintiffs' complaint on file herein, as amended; that there is substantial need for continuing this said action against said Clyde Spencer and Edwin F. Sullivan individually and in their official capacities as alleged in plaintiffs' complaint on file herein, as amended.

That defendant Martin Blote is and was at all times herein mentioned the Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, and plaintiff is informed and believes, and upon such information and belief avers the said Martin Blote is and has also operated at all times herein mentioned under the name and title of Regional Water Master of the said United States Bureau of Reclamation, with authority over the operation of the projects of the Central Valley Plan of the United States Bureau of Reclamation under the general supervision and direction of the said defendant Clyde Spencer and

his predecessor in office, in their official capacities and employment, all as aforesaid. [2033]

That Pacific Gas and Electric Company, a corporation, is and was at all times herein mentioned and in the amended complaint, on file herein mentioned, a corporation duly formed, organized and existing under and by virtue of the laws of the State of California, and is and was at all times herein mentioned and in the amended complaint on file mentioned, conducting business and operating a public utility business for the sale of electrical energy and natural and artificial gas within said United States Judicial District for Southern California and within the jurisdiction of the above entitled Court;

That Consolidated Irrigation District, International Water District, Homeland Reclamation District No. 780, and Nunes Water District are and were at all times herein mentioned public corporations, duly formed, organized and existing under and by virtue of the laws of the State of California, and are and were at all times herein mentioned operating a water distribution business in said United States Judicial District of Southern California and within the jurisdiction of the above entitled Court.

III.

That on or about the 25th day of May, 1954, defendant Clyde Spencer, purporting to act as Regional Director, Region 2, of the United States Bureau of Reclamation (and plaintiffs are informed and believe, and upon such information and belief allege, also as Regional Director of said United

States Bureau of Reclamation and as California Projects Engineer of said United States Bureau of Reclamation) and said defendant, Pacific Gas and Electric Company, a corporation, signed and mutually delivered, the one to the other, a purported written contract purporting to sell and deliver by means of diversion at Friant Dam through the Friant-Kern Canal, to said defendant, Pacific Gas and Electric Company, a minimum of 130,000 acre-feet of the waters of the San Joaquin River during a four year period beginning March 1, 1954, and ending on or about February 28, 1958, for the sum of $3.50 per acre-foot, said water to be diverted out of Friant Dam through the Friant-Kern Canal of the United States [2034] Bureau of Reclamation and delivered to defendant Pacific Gas and Electric Company at a point in Fresno County, California, where said Friant-Kern Canal intersects the Kings River in said County; that said purported contract provides in addition thereto that additional waters of said San Joaquin River in addition to said 130,000 acre feet of said waters may be purchased by defendant Pacific Gas and Electric Company, a corporation, and delivered in a similar manner upon mutual agreement of the defendant, Pacific Gas and Electric Company, a corporation, and defendant Clyde Spencer in his aforesaid official capacities;

That plaintiffs are informed and believe and upon such information and belief allege that on or about the 25th day of May, 1954, an additional purported written contract between said defendant official of the United States Bureau of Reclamation,

the said Clyde Spencer, purporting to act as Regional Director, Region 2 of the United States Bureau of Reclamation, (and plaintiffs are informed and believe and upon such information and belief aver also as Supervising Engineer, California Projects, United States Bureau of Reclamation and as Regional Director, United States Bureau of Reclamation) and the defendant, Pacific Gas and Electric Company was illegally and unlawfully made, executed and mutually delivered, the one to the other, whereby said Pacific Gas and Electric Company purportedly purchased an additional 3,000 acre-feet annually of the waters of the San Joaquin River at a price of approximately $3.50 per acre foot, to be illegally delivered by said defendant officials and employees of said United States Bureau of Reclamation to said defendant Pacific Gas and Electric Company through said Friant-Kern Canal at a point in Kern County, California, near the terminus of the Friant-Kern Canal, which said purported written contract for the purchase of said 3,000 acre-feet annually of said waters of said San Joaquin River, plaintiffs are so informed and believe and upon such information and belief allege was and is to continue for approximately 40 years thereafter; that all of said waters of said San Joaquin River which have been or will be so illegally and unlawfully [2035] stored, diverted, transported and purportedly sold to said defendant, Pacific Gas and Electric Company, the plaintiffs and the class they represent, and complainants in intervention, the said City of Fresno and Tranquillity Irrigation

District, as hereinafter set forth, are and were entitled to the reasonable, beneficial use of, under reasonable methods of diversion and use at and below Friant Dam for the purposes all as set forth in the complaint on file herein, as amended, and in complaints in intervention of said City of Fresno and said Tranquillity Irrigation District, as amended, reference to which is hereby expressly made, and the allegations of which said complaint on file herein and amendments thereto are expressly made a part hereof, as aforesaid.

That plaintiffs are informed and believe and upon such information and belief aver that all of said waters of the said San Joaquin River so sold, stored, diverted, transported and delivered, or intended and threatened to be hereafter illegally stored, sold, transported and delivered by said beforementioned defendant officials and employees of said United States Bureau of Reclamation, as hereinabove set forth under said beforementioned purportedly written contracts with said defendant Pacific Gas and Electric Company, a corporation, are to be used for industrial purposes, to wit, the generation of electrical energy, by direct use of the same, by means of the exchange of said waters of said San Joaquin River for other waters or by means of supplying percolating waters to water stratas from which Pacific Gas and Electric Company pumps water for said industrial purposes.

That plaintiffs are informed and believe, and upon such information and belief aver that sometime during the year 1954, the exact time being un-

known to these plaintiffs, said defendant Clyde Spencer, purporting to act as Regional Director, Region 2, United States Bureau of Reclamation, (and plaintiffs are informed and believe, and upon such information and belief allege, as Supervising Engineer, California Projects, United States Bureau of Reclamation, and as Regional Director of said United States Bureau [2036] of Reclamation), illegally and unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, made and entered into a purported written contract with defendant Consolidated Irrigation District, a public corporation, which was mutually signed, executed and delivered the one to the other, whereby said Consolidated Irrigation District, a public corporation, purportedly purchased approximately 30,000 acre feet of water of said San Joaquin River for $3.50 an acre foot to be and which was delivered to said Consolidated Irrigation District during the year 1954 at a point in Fresno County, California, where the said Friant-Kern Canal intersects the Kings River in said County for agricultural purposes.

That plaintiffs are informed and believe and upon such information and belief aver, that said defendant Clyde Spencer in his aforesaid capacities as an official of the United States Bureau of Reclamation, sometime during the year 1954, the exact time being unknown to the plaintiffs, illegally, unlawfully and in excess of the lawful authority conferred upon him by reason of his office and employment, and in excess of the authority conferred

upon him by the laws and statutes of the United States, made and entered into written contracts with International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public corporation, which were signed and mutually delivered, the one to the other, for the sale and delivery of certain unknown amounts of waters of said San Joaquin River to said defendant public corporations, the said International Water District, Homeland Reclamation District No. 780, and Nunes Water District, to be diverted at Friant Dam through the Friant-Kern Canal, at prices and at points of delivery now unknown to these plaintiffs, and plaintiffs are informed and believe, and upon such information and belief aver that the defendant officials and employees of said United States Bureau of Reclamation are threatening to illegally and unlawfully store, sell, deliver and transport additional waters of said San Joaquin River to said [2037] defendant public corporations heretofore mentioned, in the same manner, except as to length of time and points of delivery, as said defendant officials of said United States Bureau of Reclamation are threatening to illegally store, sell, transport and deliver to the defendant irrigation and municipal utility districts mentioned in plaintiffs' complaint, as amended, all as set forth in said plaintiffs' complaint as amended.

That all of said waters of said San Joaquin River covered by said purported illegal written contracts hereinabove mentioned were, have been, will be,

are intended to be, and are threatened to be illegally and unlawfully stored, sold, diverted, transported by said aforementioned defendant officials and employees of the United States Bureau of Reclamation in the same manner except as to points of delivery, length of time of delivery, as said defendant officials and employees of said United States Bureau of Reclamation have and intend to illegally store, divert and transport other waters of the San Joaquin River at and from a point near Friant Dam to the other defendants named in plaintiffs' complaint on file herein, as amended, the allegations of which are specifically referred to and have heretofore been incorporated herein.

III.

That said defendant officials and employees of said United States Bureau of Reclamation have, intend to, and threaten to continue to so illegally store, sell, divert and transport all of said waters of said San Joaquin River mentioned in said before-mentioned and in this paragraph mentioned, purported written contracts with said defendant public districts and said defendant Pacific Gas and Electric Company, a corporation, (excepting defendant International Water District, a public corporation) as heretofore stated, entirely out of the watershed of the San Joaquin River above the intersection of said watershed of the San Joaquin River with Fresno Slough above which the lands of plaintiffs are located, unless restrained by order of the above entitled Court, to the irreparable

[2038] damage of plaintiffs as hereinabove set forth.

IV.

That plaintiffs and the class which they represent and the complainants in intervention, the City of Fresno, and Tranquillity Irrigation District, are entitled to the use of all of said waters of said San Joaquin River covered by the terms of the hereinabove mentioned purported contracts, as riparian, prescriptive or appropriative owners and users of the waters of the San Joaquin River, and as owners of lands overlying subterranean streams and water stratas fed and supplied by said San Joaquin River, as more particularly set forth and described in plaintiffs' complaint on file herein, as amended, and as holders and owners of first priority filings on said waters of said river under the Constitution, laws and statutes of the State of California, and under the laws and statutes of the United States for the appropriation of said waters of said San Joaquin River, as set forth in the complaint in intervention of said City of Fresno, herein, which said waters plaintiffs and said complainants in intervention, said City of Fresno and Tranquillity Irrigation District have used, now use, and intend to use or will use in the future legally and lawfully under reasonable methods of diversion and use for beneficial purposes, to-wit, for agricultural, domestic and municipal purposes, all as set forth in plaintiffs' complaint, as amended, on file herein, and in the complaints in intervention, as amended, of the City of Fresno and Tranquillity Irrigation

District on file herein, reference to all of which is and has heretofore been expressly made as herein set forth; that said illegal storage, diversion, sale, transportation and said intended and threatened illegal storage, sale, diversion and transportation and use of said waters of said San Joaquin River heretofore made or threatened to be made by said aforesaid defendant officials and employees of said United States Bureau of Reclamation to said defendants as set forth in this supplemental complaint on file herein, will irrevocably damage and injure the lands, water and water rights of the plaintiffs [2039] herein and the class they represent, the lands and water rights of complainants in intervention, to-wit, the City of Fresno and Tranquillity Irrigation District and the health of plaintiffs and the inhabitants of said lands mentioned in this amendment to plaintiffs' complaint, in plaintiffs' complaint on file herein, as amended, and in complaints in intervention of said City of Fresno and Tranquillity Irrigation District, on file herein, as amended.

V.

That plaintiffs have demanded that the defendant officials and employees of said United States Bureau of Reclamation and the other defendants in this paragraph mentioned refrain from carrying out said illegal and unlawful storage, diversion and transportation and sale of said waters of said San Joaquin River as mentioned in this supplemental complaint, and that said defendant Pacific Gas and

Electric Company, a corporation, and said defendants Consolidated Irrigation District, International Water District, Homeland Reclamation District No. 780, and Nunes Water District, cease taking and accepting delivery of said water of said San Joaquin River, but that said defendants have wholly failed, refused and neglected to cease or stop the illegal and unlawful sale, storage, diversion and transportation or acceptance of delivery of said waters of said San Joaquin River as aforesaid, and threaten to, and will unless restrained by order of the above entitled Court continue to illegally sell, store, divert and transport or accept delivery of said waters of the San Joaquin River, as in this supplemental complaint and in plaintiffs' complaint, as amended, set forth, to the irreparable damage of the plaintiffs herein.

Wherefore, plaintiffs make the same prayers herein as made in their complaint on file, as amended, especially that a solution be made of the use of said waters by the above entitled Court.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs. [2040]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

AMENDMENT AND SUPPLEMENT TO COMPLAINT

Come now the Plaintiffs for themselves and for the class they represent, and for a further, separate and second cause of action, allege as follows:

I.

That this second cause of action is an action for a declaratory judgment as authorized by Section 2201 of Title 28 of the United States Code and is brought because there is an actual controversy now existing between the parties as hereinafter set forth and as to which controversy plaintiffs seek the declaratory judgment of this Court.

II.

The jurisdiction of this Court is based upon the existence of a Federal question, upon the fact that officials and employees of the United States Bureau of Reclamation and the United States of America are parties to the above entitled action and upon the ground that the amount in controversy is in excess of $3,000.00, exclusive of interest and costs, being a controversy over irreparable damage to property rights in an amount in excess of several million dollars.

III.

Plaintiffs reallege all of the allegations of plaintiffs' complaint on file herein as of the date of filing

the same, and reallege all of the amendments to plaintiffs' complaint, the same as if fully set forth herein.

IV.

That the United States of America claims and contends that all of said before mentioned acts and threatened acts of said defendant officials and employees and former defendant officials and employees of said United States Bureau of Reclamation in impounding, storing, diverting, transporting and selling said waters of said San Joaquin River, more particularly set forth and referred to in Paragraph III hereof, are lawful, legal, within the scope of the authority of their respective offices and employments and within the power and authority conferred upon defendant officials and employees of [2044] said Bureau of Reclamation by the Constitution, laws and statutes of the United States of America; that the United States of America and the other defendants contend and claim that the plaintiffs herein have no right, title or interest in said waters so stored, diverted, transported and sold by said defendant officials of said United States Bureau of Reclamation or to the use of said waters of said San Joaquin River so stored, diverted, transported and sold by said defendant officials and employees of said United States Bureau of Reclamation at the times set forth in Paragraph III hereof are and were the duly appointed, authorized and acting officials, agents and employees of the defendant, the United States of America; that plaintiffs are further in-

formed and believe, and upon such information and belief allege that said defendant, the United States of America, and said other defendants claim and contend that the laws and statutes of the United States of America, which plaintiffs in Paragraph III hereof allege to be unconstitutional and void, are lawful, legal and constitutional statutes of said United States of America.

That the State of California, in its answer on file herein claims to be the owner of all of the waters of said San Joaquin River (which the plaintiffs and complainants in intervention, the City of Fresno and Tranquillity Irrigation District, claim the right to the use of, as riparian, prescriptive and appropriative owners and users thereof, and as holders of first priority applications to appropriate said waters of said San Joaquin River) and that the United States stores said waters behind Friant Dam and sells, diverts and transports said waters of said San Joaquin River merely as trustee for said State of California; that plaintiffs are informed and believe and upon such information and belief aver that the United States of America denies all or part of said alleged rights of said State of California as alleged in the answer and amended complaint in intervention of said State of California, on file herein, which said answer and amended complaint in intervention of said [2045] State of California is here expressly referred to.

That plaintiffs in their complaint on file herein, as amended, the complainants in intervention the

City of Fresno, a municipal corporation, and Tranquillity Irrigation District, a public corporation, in their complaints in intervention on file herein, as amended, the defendant and complainant in intervention the said State of California, in its answer on file herein and complaint in intervention, as amended, the defendant irrigation, water and municipal utility districts in their answers on file herein, have all prayed that the above entitled Court make a physical solution of the right to and use of the said waters of said San Joaquin River; that said defendant officials of said United States Bureau of Reclamation in their answer on file herein, have set forth a plan of physical solution (though not expressly referring to said plan as a plan of physical solution) for the use of said waters of said San Joaquin River, which they ask the above entitled Court to approve; that said foregoing plaintiffs, complainants in intervention and said defendants during the trial of said above entitled action all approved or introduced into evidence in said above entitled action different plans of physical solution for the use of waters of said San Joaquin River; (that in this regard plaintiffs expressly refer herein to said plaintiffs' complaint, as amended, and to said complaints in intervention of said City of Fresno, said Tranquillity Irrigation District, which are expressly made a part hereof, and to the answers of said defendant, State of California, to said answer of said defendant officials and employees of said United States Bureau of Reclamation and to said answers of said de-

fendant irrigation, water and municipal utility districts on file herein); that the plan of physical solution of the plaintiffs and complainants in intervention, said City of Fresno and Tranquillity Irrigation District is feasible, legal and should be adopted and ordered into effect by decree of the above entitled Court; that said defendant, the United States of America, and the other defendants herein, claim that the plan of physical solution introduced in [2046] evidence herein by plaintiffs and complainants in intervention, the said City of Fresno and said Tranquillity Irrigation District, is not feasible, proper or legal, and claim it should not be adopted or ordered into effect by decree of the above entitled Court.

That the defendant, the United States of America, claims that the determination of the amount of the waters of said San Joaquin River, referred to in Paragraph III hereof, which plaintiffs own and to which the plaintiffs and the class they represent are legally entitled, the times of the use of said waters by plaintiffs and the class they represent, the amount of water which should legally be allowed to flow down the San Joaquin River below Friant Dam and the amount of water which may legally be diverted, if any, from the said San Joaquin River by the defendants in the above entitled action are matters solely for the administrative determination of the said defendant officials and employees of the United States Bureau of Reclamation and are not matters for judicial determination by the above entitled Court, all of which claims

of the said defendant, the United States of America, and said other defendants in this said sentence set forth, plaintiffs generally and specifically deny, said plaintiffs specifically aver that the determination of said matters is solely a matter for judicial determination by the above entitled Court.

That plaintiffs are informed and believe, and upon such information and belief aver that the said defendant, the United States of America, claims and contends that neither it nor the defendant officials and employees of said United States Bureau of Reclamation are legally required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, nor by any Act of Congress of the United States of America, to acquire, appropriate, purchase, store, sell or divert the waters of said San Joaquin River referred to in Paragraph III hereof in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the California Water Code, and any other laws or statutes of the State of California; that in this regard plaintiffs specifically aver that [2047] said defendant United States of America, and said defendant officials and employees of said United States Bureau of Reclamation, to-wit, the said United States of America, are legally bound and required by said Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the Congress of the United States and by the Constitution of the United States to appropriate, purchase, divert, store, transport and sell said waters

of said San Joaquin River (subject to the rights of the plaintiffs and the class they represent and the rights of the complainant in intervention the said Tranquillity Irrigation District, and the rights of said complainant in intervention, the said City of Fresno), if they are entitled to do so, only in accordance with said Article XIV, paragraph 3 of the Constitution of the State of California, said Water Code of the State of California and said other laws of the State of California in this said paragraph hereinabove referred to, and that said defendant officials and said other defendants, including the United States of America, are required to recognize and respect the property rights of the plaintiffs and the class they represent, the complainant in intervention the said Tranquillity Irrigation District, and the complainant in intervention the said City of Fresno in and to the waters and the use of said waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use and not to interfere with or obstruct such uses;

That the United States of America claims and asserts in the above entitled action that neither it nor the defendant officials of said United States Bureau of Reclamation are subject to the injunctive and mandatory processes of the above entitled Court in the above entitled action but to damages for irreparable injury to plaintiffs in respect to the herein alleged illegal use, storage, diversion, purchase, appropriation and sale of said waters of said San Joaquin River by said defendant of-

ficials and employees of said United States Bureau of Reclamation; that plaintiffs and the class they represent specifically allege and aver that said defendant United States of America and said defendant officials and employees of said [2048] United States of America, are subject to the injunctive, mandatory and other processes, judgments and decrees of the above entitled court in the above entitled action in regard to said illegal appropriation, use, storage, purchase, diversion and sale of said waters of said San Joaquin River by said defendant officials of said United States Bureau of Reclamation as set forth in Paragraph III hereof.

The above entitled action, as amended, and the suits in intervention of said City of Fresno, as amended, and said Tranquillity Irrigation District, as amended, and said controversies herein between the plaintiffs, the complainants in intervention, the said City of Fresno and Tranquillity Irrigation District, and said defendant United States of America, and in this said paragraph mentioned, arise out of and are for the adjudication of rights to the use of water of a river system or other source, to-wit, said San Joaquin River, all as more particularly set forth and described in Paragraph III hereof, and in the complaints in intervention of said Tranquillity Irrigation District and said City of Fresno, as amended, hereinbefore referred to; that plaintiffs are informed and believe, and upon such information and belief aver that the United States claims it is in the process of acquiring water rights to said waters of said San

Joaquin River involved in the above entitled action, by appropriation under state law, (to-wit, the laws of the State of California) by purchase, by exchange or otherwise; and that defendant United States claims the right to change point of diversion of said purchased waters and to take unappropriated water out of the watershed of said river in which plaintiffs' lands are, and from lands immediately adjacent thereto without legal permit, and even though plaintiffs are damaged thereby, and even though said unappropriated waters are necessary for beneficial uses by reasonable methods of use on plaintiffs' lands in said watershed and lands immediately adjacent thereto, and said United States asserts the right to refuse to store water for complainants in intervention behind Friant Dam upon being paid for facilities rendered useless, which said claims plaintiffs and complainants in intervention deny. [2049]

V.

That a real controversy exists as aforesaid between the plaintiffs herein, the complainants in intervention herein, said City of Fresno and said Tranquillity Irrigation District on the one hand and the defendant the United Stafes of America on the other hand, as regards whether said acts and threatened acts of said defendant officials and employees of said United States Bureau of Reclamation and said former defendant officials and employees of the said United States Bureau of Reclamation mentioned in Paragraph III hereof (as officials, agents or employees of the said United

States Bureau of Reclamation, to-wit as officials, agents and employees of said defendant United States of America) in impounding, storing, diverting, transporting and selling said waters of said San Joaquin River are legal or illegal, lawful or unlawful, and within or in excess of the authority of their respective offices, agencies and employment and within or in excess of the lawful authority conferred upon them by the Constitution, Laws and Statutes of the United States of America, and the Constitution, laws and statutes of the State of California (all of which acts and threatened acts have hereinbefore been specifically set forth herein and in Paragraph III hereof, and in the complaints in intervention of the City of Fresno and Tranquillity Irrigation District, as amended); that a real controversy exists as between the plaintiffs and the complainants in intervention the said City of Fresno and Tranquillity Irrigation District, on the one hand, and the defendant United States of America and the other defendants herein, on the other hand, as regards the question of whether plaintiffs and said complainants in intervention the said City of Fresno and said Tranquillity Irrigation District are the owners of and entitled to the use of said waters of said San Joaquin River so illegally stored, diverted and transported from said natural channel of said San Joaquin River by said defendant officials and employees of the said United States Bureau of Reclamation as alleged in Paragraph III hereof, and in said complaints in intervention, as amended, of said City of Fresno

and said Tranquillity Irrigation District (specifically referred to and made a part hereof [2050] and as regards the amount of the waters of said San Joaquin River the plaintiffs and complainants in intervention the said City of Fresno and Tranquillity Irrigation District, are entitled to under reasonable methods of diversion and use for the beneficial purposes hereinbefore referred to and under said filings to appropriate said waters of said San Joaquin River by said complainant in intervention the said City of Fresno, and in regard to the time for the use of said waters of said San Joaquin River by said plaintiffs and said complainants in intervention the said City of Fresno and Tranquillity Irrigation District.

That a real controversy as shown by plaintiffs' complaint, as amended, the complaints in intervention, as amended, and the answers of said defendants herein, reference to which is hereby expressly made, exists as between the plaintiffs, the complainants in intervention the said City of Fresno and said Tranquillity Irrigation District, on the one hand, and the said defendant the United States of America (as principal and employer of said defendant officials and employees of said United States Bureau of Reclamation) and said other defendants in this said paragraph mentioned on the other hand, regarding which said plan of physical solution offered by the parties herein is legal, lawful and practical, and which plan of physical solution, if any, should be adopted, ordered, adjudged, decreed or ordered put into effect by the above en-

title Court (and if so which of the parties herein should pay for the cost of the same, if any).

That a real controversy exists between the plaintiffs, the complainants in intervention, said Tranquillity Irrigation District and said City of Fresno on the one hand, and the defendant United States of America and said other defendants on the other hand, in regard to the question as to whether the determination of the amount of water of said San Joaquin River to which plaintiffs and the class they represent are entitled and the times of use of the same and the amount of said waters of said San Joaquin River to be allowed to flow down San Joaquin River below Friant Dam for the use of the plaintiffs and the class they represent is a matter of [2051] administrative determination by said defendant officials and employees and other officials of the United States Bureau of Reclamation, is a matter for judicial determination by the above entitled Court.

That a real controversy exists between the plaintiffs and the class they represent and said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno on the one hand, and the said defendants on the other hand, including said defendant United States of America, as to whether the United States of America and the defendant officials and employees of said United States Bureau of Reclamation are subject to the injunctive, or mandatory processes, and the decrees and judgments of this court, including any right of plaintiffs to damages for irreparable

injuries, the costs of installing and operating of any plan of physical solution which the above entitled court may decree.

That a real controversy exists between the plaintiffs and the class they represent and the said complainants in intervention the said Tranquillity Irrigation District and said City of Fresno, on the one hand, and said United States of America and the other defendants, on the other hand, as to whether said United States of America and said defendant officials of said United States Bureau of Reclamation in this said action named are required by the Basic Reclamation Act of June 17, 1902 (43 U.S.C. 391, 411), as amended, and other laws and statutes of the United States of America, and by the Constitution of the United States of America, to acquire, appropriate purchase, divert, store or transport the waters of the San Joaquin River in accordance with Article XIV, Paragraph 3 of the Constitution of the State of California, the Water Code of the State of California and the other laws and statutes of said State of California and as to whether said defendant United States of America and said defendant officials and employees of said United States Bureau of Reclamation are required to recognize and respect the rights of the plaintiffs (and the rights of said complainants in intervention, the said City of Fresno and Tranquillity Irrigation District) in and to the beneficial use of the waters of said San Joaquin River for beneficial purposes by means of reasonable methods of diversion and use. [2052]

That a real controversy exists betwen plaintiffs and complainants in intervention, said City of Fresno and Tranquillity Irrigation District and said United States of America and other defendants as to the right of defendant United States to illegally divert said water, to illegally take said unappropriated waters, and to refuse to store the same as above alleged.

That the words "other defendants", wherever used in this amendment and supplement to complaint are intended to and do include the defendant the State of California and the defendant the People of the State of California.

Wherefore, Plaintiffs demand that the Court adjudge and decree in addition to the matters set forth in the prayer of plaintiffs' complaint, as amended herein:

(1) Declare, adjudge and decree the rights of the plaintiffs and the class they represent as against all defendants as set forth in this second cause of action in and to the waters and to the use of the waters of the San Joaquin River, and declare and adjudge the disputed questions of law and fact as set forth in this second cause of action.

(2) That in regard to the prayer for a physical solution, as prayed for in plaintiffs' complaint on file herein, as amended, that the Court adopt plaintiffs' plan of physical solution and adjudge and decree that the plaintiffs' plan of physical solution as to the rights to and use of the waters of said San Joaquin River heretofore introduced in evi-

dence in the above entitled action, is feasible, proper and legal, and decree that the same be placed in operation and that all or part of the defendants pay for the cost for the installation and operation of the same.

(3) That the Court as part of any decree or judgment hereinafter declared, issue the necessary mandatory, injunctive or other process necessary to carry out the judgment herein.

(4) That the plaintiffs recover their costs.

(5) For such other and further relief as is proper in the premises.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs. [2053]

Duly Verified.

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

AMENDED AFFIDAVIT OF SERVICE BY MAIL

State of California
County of Fresno—ss.

Marcia Mott, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of

18 years of age and not a party to the above entitled action.

That on the 3rd day of September, 1954, she deposited in the United States mails in the post office at Fresno, California in an envelope bearing the requisite postage, in the above entitled action:

1. Form of Order dropping plaintiffs, adding party defendants, allowing filing of supplemental complaint, and allowing filing of amendment and supplement to complaint, as amended.

2. Form of Order adding defendants in intervention, allowing filing of supplemental complaint in intervention and allowing filing of amendment and supplement to complaint in intervention, as amended, of the City of Fresno.

3. Form of Order adding defendants in intervention, allowing filing of supplemental complaint in intervention and allowing filing of amendment and supplement to complaint in intervention, as amended, of Tranquillity Irrigation District.

4. Affidavit of service by mail for the above papers.

addressed to each of the following: [2125]

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts.

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District.

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts.

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts.

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, attorney for Stone Corral Irrigation District.

Herbert Brownell, Attorney General of the United States, Washington, D. C., attorney for the United States of America.

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America.

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California, attorneys for Chowchilla Water District, et al.

David E. Peckinpah and Harold M. Child, At-

torneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District.

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities.

United States Attorney's Office, Federal Building, San Francisco, California.

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ MARCIA C. MOTT.

Subscribed and sworn to before me this 3rd day of September, 1954.

[Seal] /s/ CLAUDE L. ROWE,
Notary Public in and for said County and State. [2126]

[Endorsed]: Filed September 13, 1954.

[Title of District Court and Cause.]

ORDER ADDING DEFENDANTS IN INTERVENTION, ALLOWING FILING OF SUPPLEMENTAL COMPLAINT IN INTERVENTION AND ALLOWING FILING OF AMENDMENT AND SUPPLEMENT TO COMPLAINT IN INTERVENTION, AS AMENDED, OF THE CITY OF FRESNO

The motion of the complainant in intervention, the City of Fresno, dated July 27th, 1954, to add Pacific Gas & Electric Company, a corporation, International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, Nunes Water District, a public corporation, and Consolidated Irrigation District, a public corporation as defendants in intervention in the above entitled action, to file a supplemental complaint to the complaint in intervention, as amended, on file herein, among other things naming said corporations as defendants in intervention herein, and to file an amendment and supplement to the amended complaint in intervention on file herein, having come on regularly for hearing before the above entitled Court the 16th day of August, 1954; and the Court having found that all of the present defendants in intervention, including the United States of America, had due, lawful and proper notice of said hearing, and all defendants in intervention in the above entitled action having appeared at the hearing of said motion (except the defendant in intervention the United States

of America, and the defendant in intervention officials of the United States Bureau of Reclamation mentioned in complainant's complaint in intervention on file herein, as amended, to wit: Defendants in intervention Edwin F. Sullivan, Clyde E. Spencer and Martin Blote in their individual and official capacities, and neither the said defendant in intervention United States of America nor said before mentioned defendant in intervention officials of said United States Bureau of Reclamation in either their official or individual capacities having filed any written objection to the granting of said motion of complainant in intervention dated the 27th day of July, 1954, nor made any oral or other objection to the granting of the same) and Pacific Gas & Electric Company, a corporation, having appeared in open court on the hearing of said motion of complainant in intervention [2132] dated the said 27th day of July 1954, through Gilbert H. Jertberg and William B. Kuder, its attorneys and Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public corporation, having appeared in open court at the hearing of said motion of complainant in intervention through their attorney, Gilbert H. Jertberg, and thereafter by stipulation between counsel for complainant in intervention and said Homeland Reclamation District No. 780, Nunes Water District, and Pacific Gas & Electric Company having filed certain written documents in opposition to the granting of complainant in intervention's said motion dated the said 27th day of July, 1954, and

counsel for complainant in intervention having stated in open court that he desired to dismiss said motion as against said International Water District for the reason, among others, that there did not appear to be any threatened use of water of said San Joaquin River by said International Water District, and it appearing and the Court so finds that the grounds stated in said complainant in intervention's motion dated said 27th day of July, 1954 for the granting of said motion are all true, except that said International Water District, Homeland Reclamation District No. 780 and Nunes Water District are not threatening to take waters of the San Joaquin River in the future; that the United States and all other defendants except Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation, have heretofore been served with summons and the original complaint and all amendments thereto which were filed prior to July 27, 1954 in compliance with the applicable statutes and the Federal Rules of Civil Procedure, or have appeared in the above entitled action; that the granting of said motion will make the pleadings conform to the evidence, that the interest of justice requires the granting of said motion, and that the adding of said Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District as [2133] defendants in intervention, and allowing the filing of said supplemental complaint in intervention and said amendment and supplement to complaint in intervention will not deprive the above entitled

Court of jurisdiction in the above entitled action, and the Court finds that it is advisable that all defendants in intervention answer said supplemental complaint in intervention and said amendment and supplement to said complaint in intervention, as amended.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the proposed supplemental complaint to complainant's complaint in intervention, as amended, filed herein, be and is hereby ordered filed as a supplemental complaint to complainant's complaint in intervention, as amended, in the above entitled action as of date hereof.

2. That the proposed amendment and supplement to complainant's complaint in intervention, as amended, heretofore filed herein, be ordered filed as an amendment and supplement to complainant's complaint in intervention, as amended, as of date hereof.

3. That Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation be made defendants in intervention in the above entitled action under the complaint in intervention of said City of Fresno.

4. That Homeland Reclamation District No. 780, Nunes Water District and International Water District be not made defendants in intervention to the above entitled action.

5. That said defendants, said Pacific Gas & Electric Company, a corporation, and said defendant Consolidated Irrigation District, a public corporation, be served with summons, together with complainant's complaint in intervention, as amended, together with said supplemental complaint in intervention, with time to answer the same as required by the Federal Rules of Civil Procedure.

6. That said United States of America and said [2134] defendant in intervention officials of the United States Bureau of Reclamation, individually and in their official capacities, and all other defendants in the above entitled matter answer said supplemental complaint in intervention and said amendment and supplement to complaint in intervention, as amended, within 20 days from date of service upon them of this order, together with copies of said supplemental complaint in intervention and amendment and supplement to complaint in intervention hereinabove referred to.

Dated this 17th day of September, 1954.

s/ PEIRSON M. HALL,
Judge of the U. S. District
Court. [2135]

[Endorsed]: Filed September 17, 1954. Judgment docketed and entered September 17, 1954.

[Title of District Court and Cause.]

ORDER ADDING DEFENDANTS IN INTERVENTION, ALLOWING FILING OF SUPPLEMENTAL COMPLAINT IN INTERVENTION AND ALLOWING FILING OF AMENDMENT AND SUPPLEMENT TO COMPLAINT IN INTERVENTION, AS AMENDED, OF TRANQUILLITY IRRIGATION DISTRICT

The motion of the complainant in intervention Tranquillity Irrigation District, dated July 27, 1954 to add Pacific Gas & Electric Company, a corporation, International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, Nunes Water District, a public corporation, and Consolidated Irrigation District, a public corporation as defendants in intervention in the above entitled action, to file a supplemental complaint to the complaint in intervention, as amended, on file herein, among other things naming said corporations as defendants in intervention herein, and to file an amendment and supplement to the amended complaint in intervention on file herein, having come on regularly for hearing before the above entitled Court the 16th day of August, 1954; and the Court having found that all of the present defendants in intervention, including the United States of America, had due, lawful and proper notice of said hearing, and all defendants in intervention in the above entitled action having appeared at the hearing of said mo-

tion (except the defendant in intervention the United States of America, and the defendant in intervention officials of the United States Bureau of Reclamation mentioned in complainant's complaint in intervention on file herein, as amended, to-wit: Defendants in intervention Edwin F. Sullivan, Clyde E. Spencer and Martin Blote in their individual and official capacities, and neither the said defendant in intervention United States of America nor said before mentioned defendant in intervention officials of said United States Bureau of Reclamation in either their official or individual capacities having filed any written objection to the granting of said motion of complainant in intervention dated the 27th day of July, 1954, nor made any oral or other objection to the granting of the same) and Pacific Gas & Electric Company, a corporation, having appeared in open court on the hearing of said motion of complainant in intervention dated the said 27th day of July, 1954 through Gilbert H. Jertberg and William B. Kuder, its attorneys [2144] and Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public corporation, having appeared in open court at the hearing of said motion of complainant in intervention through their attorney, Gilbert H. Jertberg, and thereafter by stipulation between counsel for complainant in intervention and said Homeland Reclamation District No. 780, Nunes Water District, and Pacific Gas & Electric Company having filed certain written documents in opposition to the granting of complainant in

intervention's said motion dated the said 27th day of July, 1954, and counsel for complainant in intervention having stated in open court that he desired to dismiss said motion as against said International Water District for the reason, among others, that there did not appear to be any threatened use of water of said San Joaquin River by said International Water District, and it appearing and the Court so finds that the grounds stated in said complainant in intervention's motion dated said 27th day of July, 1954 for the granting of said motion are all true, except that said International Water District, Homeland Reclamation District No. 780 and Nunes Water District are not threatening to take waters of the San Joaquin River in the future; that the United States and all other defendants except Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation, have heretofore been served with summons and the original complaint and all amendments thereto which were filed prior to July 27, 1954 in compliance with the applicable statutes and the Federal Rules of Civil Procedure, or have appeared in the above entitled action; that the granting of said motion will make the pleadings conform to the evidence, that the interest of justice requires the granting of said motion, and that the adding of said Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District as defendants in intervention, and allowing the filing of said supplemental [2145] complaint in intervention and said amendment and supplement to said

complaint in intervention will not deprive the above entitled Court of jurisdiction in the above entitled action, and the Court finds that it is advisable that all defendants in intervention answer said supplemental complaint in intervention and said amendment and supplement to said complaint in intervention, as amended.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that:

1. That the proposed supplemental complaint to complainant's complaint in intervention, as amended, filed herein, be and is hereby ordered filed as a supplemental complaint to complainant's complaint in intervention, as amended, in the above entitled action as of date hereof.

2. That the proposed amendment and supplement to complainant's complaint in intervention, as amended, heretofore filed herein, be ordered filed as an amendment and supplement to complainant's complaint in intervention, as amended, as of date hereof.

3. That Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation be made defendants in intervention in the above entitled action under the complaint in intervention of said Tranquillity Irrigation District.

4. That Homeland Reclamation District No. 780, Nunés Water District and International Water Dis-

trict be not made defendants in intervention to the above entitled action.

5. That said defendants, said Pacific Gas & Electric Company, a corporation, and said defendant Consolidated Irrigation District, a public corporation, be served with summons, together with complainant's complaint in intervention, as amended, together with said supplemental complaint in intervention, and together with said amendment and supplement to [2146] complaint in intervention, with time to answer the same as required by the Federal Rules of Civil Procedure.

6. That said United States of America and said defendant in intervention officials of the United States Bureau of Reclamation, individually and in their official capacities, and all other defendants in the above entitled matter answer said supplemental complaint in intervention, and said amendment and supplement to complaint in intervention, as amended, within 20 days from date of service upon them of this order, together with copies of said supplemental complaint in intervention and amendment and supplement to complaint in intervention herein above referred to.

Dated this 17th day of September, 1954.

/s/ PEIRSON M. HALL,
Judge of the U. S. District
Court, [2147]

[Endorsed]: Filed September 17, 1954. Judgment docketed and entered September 17, 1954.

[Title of District Court and Cause.]

ORDER DROPPING PLAINTIFFS, ADDING PARTY DEFENDANTS, ALLOWING FILING OF SUPPLEMENTAL COMPLAINT, AND ALLOWING FILING OF AMENDMENT AND SUPPLEMENT TO COMPLAINT AS AMENDED

The motion of the Plaintiffs dated July 27, 1954 to drop Bertha Folsom as a party to the above entitled action, to add Pacific Gas & Electric Company, a corporation, International Water District, a public corporation, Homeland Reclamation District No. 780, a public corporation, Nunes Water District, a public corporation, and Consolidated Irrigation District, a public corporation, as party defendants in the above entitled action, to file a supplemental complaint to the complaint, as amended, on file herein, among other things naming said corporations as party defendants herein, and to file an amendment and supplement to the amended complaint on file herein, having come on regularly for hearing before the above entitled Court the 16th day of August, 1954; and the Court having found that all of the present defendants, including the United States of America, and Plaintiff Bertha Folsom, had due, lawful and proper notice of said hearing, and all defendants in the above entitled action having appeared at the hearing of said motion (except the defendant the United States of America, and the defendant officials of the United States Bureau of Reclamation men-

tioned in plaintiffs' complaint on file herein, as amended, to wit: Defendants Edwin F. Sullivan, Clyde E. Spencer and Martin Blote in their individual and official capacities, and neither the said defendant United States of America nor said before mentioned defendant officials of said United States Bureau of Reclamation in either their official or individual capacities having filed any written objection to the granting of said motion of plaintiffs dated the 27th day of July, 1954, nor made any oral or other objection to the granting of the same) and Pacific Gas & Electric Company, a corporation, having appeared in open court on the hearing of said motion of plaintiffs dated the said 27th day of July, 1954, through Gilbert H. Jertberg and William B. Kuder, its attorneys and Homeland Reclamation District No. 780, a public corporation, and Nunes Water District, a public [2138] corporation, having appeared in open court at the hearing of said motion of plaintiffs through their attorney, Gilbert H. Jertberg, and thereafter by stipulation between counsel for plaintiffs and said Homeland Reclamation District No. 780, Nunes Water District and Pacific Gas & Electric Company, said Homeland Reclamation District No. 780, Nunes Water District, and Pacific Gas & Electric Company having filed certain written documents in opposition to the granting of plaintiffs' said motion dated the said 27th day of July, 1954, and counsel for plaintiffs having stated in open court that he desired to dismiss said motion as against said International Water District for the

reason, among others, that there did not appear to be any threatened use of water of said San Joaquin River by said International Water District, and it appearing and the Court so finds that the grounds stated in said plaintiffs' motion dated said 27th day of July, 1954 for the granting of said motion are all true, except that said International Water District, Homeland Reclamation District No. 780 and Nunes Water District are not threatening to take waters of the San Joaquin River in the future; that the United States and all other defendants except Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation, have heretofore been served with summons and the original complaint and all amendments thereto which were filed prior to July 27, 1954 in compliance with the applicable statutes and the Federal Rules of Civil Procedure, or have appeared in the above entitled action; that the granting of said motion will make the pleadings conform to the evidence, that the interest of justice requires the granting of said motion, and that the adding of said Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District as party defendants, the dropping of Bertha Folsom as a party defendant, and allowing the filing of said supplemental complaint and said amendment and supplement to complaint will not deprive the above [2139] entitled Court of jurisdiction in the above entitled action, and the Court finds that it is advisable that all defendants answer said supplemental complaint and said

amendment and supplement to complaint, as amended.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the proposed supplemental complaint to plaintiffs' complaint, as amended, filed herein be and is hereby ordered filed as a supplemental complaint to plaintiffs' complaint, as amended, in the above entitled action as of date hereof.

2. That the proposed amendment and supplement to plaintiffs' complaint, as amended, heretofore filed herein, be ordered filed as an amendment and supplement to plaintiffs' complaint, as amended, as of date hereof.

3. That Bertha Folsom be dropped as a party defendant in the above entitled action.

4. That Pacific Gas & Electric Company, a corporation, and Consolidated Irrigation District, a public corporation, be made party defendants in the above entitled action.

5. That Homeland Reclamation District No. 780, Nunes Water District and International Water District be not made parties to the above entitled action.

6. That said defendants, said Pacific Gas & Electric Company, a corporation, and said defendant Consolidated Irrigation District, a public corporation, be served with summons, together with plaintiffs' complaint, as amended, together with said supplemental complaint, and together with said amendment and supplement to complaint, with time

to answer the same as required by the Federal Rules of Civil Procedure.

7. That said United States of America and said defendant officials of the United States Bureau of Reclamation, [2140] individually and in their official capacities, and all other defendants in the above entitled matter answer said supplemental complaint and said supplement and amendment to complaint, as amended, within 20 days from date of service upon them of this order, together with copies of said supplemental complaint and amendment and supplement to complaint hereinabove referred to.

Dated this 17th day of September, 1954.

/s/ PEIRSON M. HALL,
Judge of the U. S. District
Court. [2141]

[Endorsed]: Filed September 17, 1954. Judgment docketed and entered September 17, 1954.

[Title of District Court and Cause.]

SUGGESTION RELATIVE TO THE AMICABLE SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CLAIMANTS TO RIGHTS TO THE USE OF WATER IN THE SAN JOAQUIN RIVER

Comes now the United States of America, acting by and through J. Lee Rankin, Assistant Attorney

General, and William H. Veeder, Special Assistant to the Attorney General, and for the purpose of this suggestion only and without submitting to jurisdiction, respectfully brings to this Court's attention the following facts:

I.

The Bureau of Reclamation, Department of the Interior, in conformity with Congressional authorization, initiated and carried forward a program pursuant to which reimbursement was made to claimants to rights to the use of water in the San Joaquin River by reason of alleged invasion of those rights through the construction and operation of Friant Dam, the Friant-Kern Canal and the Madera Canal.

II.

The procedure for settling amicably the claims in question alluded to in paragraph I above had been initiated long prior to the institution of the subject proceedings with the resulting benefit to both the United States of America and to the claimants with whom settlements were made. [2148]

III.

This Honorable Court as evidenced by Exhibit A of this suggestion, declared its opposition to further settlement by the United States of America with the claimants to whom reference has been made above.

IV.

After careful consideration of the matter it has been concluded that the settlements are of great benefit to all concerned and that the course taken in effectuating those settlements was in full conformity with the will of Congress, all as expressed in the memorandum of points and authorities in support of this suggestion.

Wherefore, the United States of America respectfully suggests to this Honorable Court that it is without jurisdiction to prevent the program of amicable settlements of claims to rights to the use of water from the San Joaquin River and respectfully advises this Court that it will forthwith proceed to conduct further negotiations and to conclude final settlements in accordance with the procedure adhered to prior to the action taken by this Court as evidenced by Exhibit A of this suggestion; Provided, Nevertheless, out of courtesy for this Honorable Court, information respecting settlements which are negotiated in accordance with the preceding statements will be supplied to it to the end that it will be advised of all developments.

Dated: September 10, 1954.

UNITED STATES OF AMERICA,
/s/ J. LEE RANKIN,
Assistant Attorney General,
/s/ WILLIAM H. VEEDER,
Special Assistant to the Attorney General. [2149]

[Title of District Court and Cause.]

EXHIBIT "A"

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Fresno, California
May 28, 1952
September 19, 1952

Appearances: (Heretofore noted.) [2150]

(Copy) [page 5595]

Fresno, California; May 28, 1952;
9:30 O'Clock A.M.

The Court: Before proceeding, I wish to make a statement for the record.

Yesterday evening, at the suggestion of various counsel, after court Mr. Rowe and Mr. McPherson, Mr. Bennett and Mr. Graham came into the office in connection with the question immediately then pending as to negotiations concerning the possible settlement of the water rights and supply of water for the Tranquillity Irrigation District, and for Bambauer and Sachs and Borland——

Mr. McPherson: Bambauer and Sachs, and Borland Water District.

The Court: ——Bambauer and Sachs, and Borland Water District.

That led to a general discussion concerning the matter of supplying water for the current season, and also to a general discussion concerning possi-

Exhibit "A"—(Continued)

ble permanent settlement of various claimed, existing or claimed water rights and water supplies on a permanent basis, in areas of the river which were generally in the west or most westerly portion of what has been described as the possible exterior limits of the class suit.

At that time I indicated to counsel that I could see no objection whatsoever to the Bureau of Reclamation and any land owner within any portion of the areas within the exterior limits of the so-

[page 5596]

called class suit entering into contracts for temporary supplies of water, that is to say, for the current season.

As to the permanent contracts, it seemed to me then and it seems to me now that, under the rule which prohibits the [2151] settlement of a class suit without the consent of the Court, and in view of the fact that I have held that under the pleadings a cause of action is stated for a class of suit, and in view of the fact that one of the issues now presently on trial is the extent of the area or limit of those within the two classes which are involved in this trial, that a permanent contract for settlement of rights or for supply of water could not appropriately or should not appropriately or properly be made without some kind of a petition or pleading being filed in this case, with appropriate notice—at that time I indicated only to the plaintiffs, but at this time it seems to me that notice should be given to the districts as well—on such

Exhibit "A"—(Continued)

occurring, because, under their contracts, their rights might be involved, I don't know—so that this court might comply with the provisions of the Federal Rules of Civil Procedure, in either approving such a settlement or not approving it.

The stages of negotiations between the Government officials and the various parties interested, I think, are indicated to be seven possible negotiations which had at one time or another been commenced, but all of which had ceased since I had

[page 5597]

indicated in court here that no party to this lawsuit should settle or attempt to settle the rights of any other party so long as the litigation was going on. So that it seems to me now, and it did last night, that those parties should be free to negotiate to the point where some form of contract may be tentatively agreed upon, and that if then there is another ex parte conference we might agree upon a procedure, which seems to me now to be that after a certain stage is reached that it be brought on to the court here, by a petition and notice, so that then I will have something to [2152] adjudicate or something to exercise the judicial power on, whether or not I hold that it is necessary then to have it filed or for this court to act, or whether I hold that it can be approved or cannot be approved. But until something is sufficiently and definitely presented to the court, there is nothing for the judicial power to act upon.

I think that that covers the points that were

Exhibit "A"—(Continued)

raised last night, and is sufficiently clear for all the parties to understand.

[page 5598]

Mr. Rowe: Shouldn't the court include the Gravelly Ford Water Users Association, James Irrigation District and the Traction Ranch in those seven named.

The Court: I only named two because those were the two which precipitated the discussion last night and led into the general discussion, so that I understand now, so that there will not be the apprehension which has been expressed, whether true or not, that the Bureau will, as Mr. Rowe said, run up and down the river and try to settle with everybody, that the things that the parties now specifically have in mind are the associations with Tranquillity, Goldman and Bambauer, Sachs and the Borland Irrigation District——

Mr. Goldberg: Borland Water District.

The Court: Borland Water District, the James Irrigation District——

Mr. Rowe: The Traction Ranch.

The Court: Is that the same one as some man's name?

Mr. McPherson: Yes. The same as Emil Schram.

The Court: Traction Ranch or Schram, Gravelly Ford Water Users Association—what is the seventh?

Mr. McPherson: Grass Lands. I think, however, that is [2153] more appropriately in the Hollister case.

Exhibit "A"—(Continued)

The Court: The Grass Lands——

Mr. Rowe: The Hollister was one.

The Court: Grass Lands is not in this case.

[page 5599]

Mr. Rowe: Mr. Boke called a meeting with the directors of the Grass Lands in the Hollister case the other day in Fresno. My directors haven't enlightened me, neither has Mr. Boke enlightened Mr. Graham, but I think the Hollister case is one of the seven.

Mr. Bennett: No.

Mr. Graham: The Grass Lands Association, as I understand it, is one of the seven, and just how it is related to the Hollister case I am not sure.

The Court: In any event, the Grass Lands Association, no part of their land, if I can read the lines correctly which have been drawn for the exterior possible limits of the class suit, are included within the classes claimed, are they, Mr. Rowe?

Mr. Rowe: It is brought in the name of Hollister Land and Cattle and Yellowjacket.

The Court: They are not in this case.

Mr. Rowe: But they are one of the seven Mr. Graham named.

The Court: Then we will put down as the seventh the Grass Lands, if they are involved in this case.

Mr. McPherson: P. G. & E.

The Court: That will be eight.

Mr. McPherson: Yes, sir.

Exhibit "A"—(Continued)

Mr. Rowe: Is that right, Mr. Graham? [2154]
[page 5600]

Mr. Graham: Yes, I understand so.

The Court: Grass Lands, if any, and then that will be eight, the Pacific Gas & Electric Company.

Mr. McPherson: Yes, sir.

Does that complete your Honor's statement?

The Court: That completes my statement.

Mr. McPherson: Now in behalf of the defendant officials of the Bureau which are served and before this court, we would like the record to show that they nor their counsel presume to bind the Government of the United States, the Secretary of the Interior or any of the officials of the Government of the United States and the power to contract for it and on its behalf. It is their position that the admonition of the court here made is, in effect, a control of the Government of the United States in the management, operation and disposition of its property and that this court was and is without jurisdiction in the premises and that this court notwithstanding the order made on the plaintiffs' complaint to the effect that it is a class action, that this court does not have jurisdiction of the United States or of its property and that none of its contracts with the individuals or firms named are subject to the control, order or regulation of this court, nor is the validity, scope and effect of such contracts subject to

Exhibit "A"—(Continued)

such order, modification or revision by this court. That is to say, saving and reserving all of the

[page 5601]

exceptions which the Government may have, that is, the Government of the United States, and the Secretary of the Interior to the order which the court has made.

I assure that as long as I am in charge of this case, those of us connected with this case will, as I said before, [2155] honor and respect every order and direction that this court makes. I do not, however, by that statement presume to bind the Government of the United States or its officials.

The Court: I understand your position.

I wish further to say in connection with the matter now before this court as to the determination of the class, it is quite within the realm of possibility that the court, as a result of this trial, may find that none of these parties are within any class to this suit. But up to this time, as I have indicated, I have held that the complaint states a cause of action for a class action and the plaintiffs' claim of limits.

Mr. McPherson: In that connection, in order that there may be no misunderstanding of my position or the position of Mr. Graham, who is here as regional counsel for the Bureau of Reclamation, as we have intimated to the court we are very hopeful that a constructive attitude and approach to this problem, whether it be within the specific limits of this case or not, will be taken and given

Exhibit "A"—(Continued)

effect by the Government officials and those constituted under the law with authority or bound

[page 5602]

under the law to recognize the mandate of Congress and that no difficulty can or will arise concerning the water rights of these people except perhaps the evaluation of those that are taken and impaired. Ours is, I hope, an attitude which will be constructive and which will produce the desired effect, which is the recognition and preservation of the water rights of everybody having any claim upon the flow of the San Joaquin River.

One other observation I wish to make, subject to the exception which I have just made: You asked that service be [2156] made on also the districts. I take it that that service can be made on the appearing counsel of record.

The Court: Most assuredly. I think I entered a general order here at one time that any service in the case should be made upon designated counsel.

Mr. Child: I think you did.

The Court: It certainly does not need to be made upon every possible district.

And I wish also to further comment that I have held of course there is jurisdiction in the defendant officials and I have no doubt that the other departments of the Government and other officials of the Government of the United States will, in good faith, respect the decision of this court until it is overturned by a higher court.

Exhibit "A"—(Continued)

Mr. Goldberg: Will the court also direct that [page 5603]
service be made on the intervenor State of California?

The Court: Yes.

Mr. Goldberg: Thank you.

Mr. McPherson: Shall we proceed?

The Court: If you will.

CHARLES H. LEE

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows: [2157]

(Copy) [page 10,468]

Fresno, California; September 19, 1952
9:30 O'Clock A. M.

The Court: What is the name of the attorney for the Bureau?

Mr. Goldberg: Mr. Russell Kletzing, K-l-e-t-z-i-n-g.

The Court: Mr. Rowe, you have a matter to bring up?

Mr. Rowe: Yes, I do.

The Court: I wonder if Mr. Kletzing will be present?

Mr. Burton: I believe he left this morning.

The Court: Very well.

Mr. Rowe: I want to put this in the record. Yesterday I was informed that Mr. Kletzing informed the court that negotiations were going on for settlement with the Tranquillity Irrigation Dis-

Exhibit "A"—(Continued)

trict and the City of Fresno. If so, they are without my knowledge. Mr. Kletzing came to my office and denied he made any such statement to this court.

This morning—rather yesterday afternoon, as the court observed, after the court had made the ruling that there be no negotiations for settlement, at least except through counsel, Mr. Stoddard brought in three members of the U.S.G.S., which are also members of the Department of the Interior, under the same boss, Mr. Chapman. Apparently they knew nothing——

The Court: As the Bureau of Reclamation?

Mr. Rowe: What is that?

[page 10,469]

The Court: As the Bureau of Reclamation?

Mr. Rowe: Yes. That is, Mr. Stoddard is a witness for the government in this case, and is going to appear——

Mr. Child: He isn't a witness for the government. Mr. Stoddard is an engineer for the Chowchilla Irrigation District. [2158]

Mr. Rowe: I will dispute that. He and his partner are doing work for the Bureau, or the Department of the Interior. I may be wrong in that.

Anyway, he is an opposition witness.

He brought the three U.S.G.S. men in here and briefed them about something they apparently knew nothing about.

The court was set for 9:30 this morning. Twenty minutes after 9:00, Mr. Walker, one of the U.S.G.S.

Exhibit "A"—(Continued)

men, contacted a City Attorney, which I think is against the court's ruling, for an appointment to go over and negotiate with Mr. Snedeker, the Commissioner of Public Works, on this problem, to apparently back up Mr. Kletzing's statement to the court that the City would negotiate.

I bring these things to the court's attention, and, as far as I know, there has been no negotiations. This court has taken nearly eight months of its time. The Bureau of Reclamation, since 1944, since the construction of Friant Dam, has not made any serious effort to settle with either the City of Fresno or Tranquillity, or the James or the Traction

[page 10,470]

Ranch; and now they are in a very big rush.

This court has devoted some eight months of time, eight months of trial work; and my suggestion is that the Bureau, whatever their offers are now, are the result of this suit and the consideration this court has given it, and there isn't any such immediate emergency that all of a sudden the Bureau has to start negotiations, but if they are starting such negotiations, it is without any knowledge or consent on my part.

The Court: I made a statement some time ago, in connection with negotiations—and I thought I made it clear—that there could be no objection, insofar as the conduct of [2159] this lawsuit is concerned, to making any temporary agreements or agreements for temporary supply of water.

I thought I made it clear also that there was no

Exhibit "A"—(Continued)

objection to any tentative agreement concerning a permanent supply of water.

I also thought I made it clear those tentative negotiations should not be conducted unless they were conducted through Mr. Rowe, who is appearing here as counsel for the class.

Perhaps I misunderstood Mr. Kletzing yesterday; but I understood from him—he came to see me in chambers, and had a copy of the transcript—I understood he was negotiating for a permanent settlement with the City of Fresno and Tranquillity, with the idea that when they got a tentative

[page 10,471]

agreement they would come in and ask the court for some kind of permanent agreement.

That was not the sort of understanding I had of the ruling I made in the matter. So as to make the matter clear. I will now state that, in view of the fact a dispute concerning the water rights has existed here at least since the diversion began at Friant Dam, and in view of the fact that the class action has been filed, and in view of the provisions of the Rules of Civil Procedure that a settlement cannot be made of any portion of the class action without the consent of the court, and in view of the rulings in this case to date; and in view of the fact that Mr. Rowe has alone, as counsel, conducted this litigation on behalf of all members of the class, I do not think it appropriate for the Bureau or the U.S.G.S., or any other agency of the government or the State of California or the irriga-

Exhibit "A"—(Continued)

tion districts, or any other parties to this suit, [2160] to attempt to negotiate any tentative agreement or any permanent agreement with anyone or any of the lands within the outermost exterior boundaries of either Mr. Lee's line or Mr. Smith's line, as put on the map, unless they are conducted through the counsel, Mr. Rowe. I think it is highly improper.

I mean, if it were a private suit and the parties to the suit attempted to go around counsel, in the effort to negotiate, they would subject themselves to a contempt order; and I think the same rules should apply to the government agencies.

[page 10,472]

I think it is highly improper for any party to this lawsuit, without going through Mr. Rowe as attorney for the class action, to attempt to negotiate any permanent settlement. I think it is likewise improper to attempt to negotiate even an arrangement for temporary water without going through Mr. Rowe, because the burden of carrying this case has been extremely heavy on counsel. Obviously it has been financed by a few farmers along the river, who have been referred to as a few farmers, but who, nevertheless, have undertaken what they consider to be a public duty and, in the long run, represent members of the class.

And, whether I decide against them or not, their efforts are to be commended as an effort to protect not only their rights but the rights of others.

So from now on, I will frown upon, and take

Exhibit "A"—(Continued)

whatever action is necessary, if any negotiations are conducted or attempted to be conducted with any of the owners of the lands within the limits I have named, for a temporary supply, a tentative permanent supply, or a permanent supply, unless conducted through Mr. Rowe and with his consent and full knowledge. [2161]

[page 10,473]

Mr. Burton, your Honor, to verify that, do you mean to change your previous order with respect to the negotiation of the temporary contracts?

The Court: If that changes the previous order, it changes it. I think the temporary contracts ought to be conducted through Mr. Rowe, or he should know about them. If your temporary contracts are negotiated, why then it seems to me that they should be filed in court although of no concern particularly here.

I am sure, as far as Mr. Rowe is concerned, he will have no objection to any temporary water supply, but in order to clarify the matter and to prevent any misconception, I think it proper and appropriate, and I deem it my duty, to make an order as stringent as I have made it now.

Mr. Burton: One further point, your Honor.

I am not personally familiar with some of the facts that Mr. Rowe stated. I suggested that if he feels it important enough he should prove them rather than merely stating them to the court.

Exhibit "A"—(Continued)

The Court: What facts?

Mr. Burton: As to what Mr. Kletzing said, who he negotiated with, and the type of things that he stated. Some of them I believe are fairly serious charges and if they are important to this case I believe they should be proved.

The Court: All he said is that Mr. Kletzing came to me.

[page 10,474]

Mr. Rowe: Yes. I am merely stating what he said to the court: I said that he denied he said that to the court to me in the presence of Mr. Frank Miller, the Tranquillity Irrigation District manager. [2162]

The Court: Regardless of what he said to me, it may be that I misunderstood him. But in any event I think that the matter is of sufficient importance that I should make the order, and I am making it now.

It is needless for me to tell counsel here who have sat throughout this lawsuit the importance of this matter. It is also needless for me to remind them that the ultimate decision of where the underground water comes from rests upon my shoulders and cannot be predicated at this time upon anybody's theory, the plaintiffs' theory, the Districts' theory, the State's theory or the Government's theory.

Mr. Rowe: I was also asked to state by Tranquillity Irrigation District that they do not care

Exhibit "A"—(Continued)

to negotiate. The Government had plenty of opportunity for some eight years and without a definite offer until they filed a petition in this action.

The Court: I suggested to Mr. Kletzing that he take the matter up with Mr. Rowe. He is not here now. But if there could be any agreement, they could bring the matter up in court.

[page 10,475]

So the matter was brought up in court and I do not think my order is unfair to any of the litigants, any of the landowners, or the Bureau, or any other parties to this litigation.

Mr. Goldberg: May I say one thing should be clarified in the record?

The court has referred to the burden of this suit being borne by various individuals. Now it is true that those individuals, in the knowledge of all of us here, have borne [2163] some of the costs of this suit—how much, I don't know—but it is also true that the two public agencies to which reference has been made, the Tranquillity Irrigation District and the City of Fresno, have borne part of their own costs certainly.

The Court: Perhaps so. If that is a fact, that is a fact.

Mr. Rowe: It is. I think we now have all of the facts stated.

The Court: Proceed. [2164]

[Title of District Court and Cause.]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF SUGGESTION RELATIVE TO THE AMICABLE SETTLEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE CLAIMANTS TO RIGHTS TO THE USE OF WATER IN THE SAN JOAQUIN RIVER

The United States of America has for many years conducted a program pursuant to which the claimants to rights to the use of water in the San Joaquin River were paid for any invasion of their rights by reason of the construction of Friant Dam, the Friant-Kern Canal and the Madera Canal.[1] In the last cited case the Supreme Court of the United States reviewed in great detail the undertaking by the National Government in connection with the Central Valley Project. There it emphasized the power and authority of the Congress to provide funds for the purpose of paying for rights which had been invaded by the Project. From that review by the Supreme Court it is evident that the United States of America in regard to the rights in question has properly exercised its [2165] power of eminent domain in regard to the rights in question. Equally evident is the approval by that Court of the remedy available to owners of rights to the use of water whose rights have been encroached

[1] Gerlach Livestock Company v. United States, 76 F. Supp. 87 (Ct. Cls. 1948); United States v. Gerlach Live Stock Company, 339, U.S. 725 (1949).

upon by the development of the Central Valley Project. Pertinent in that regard are the decisions of the United States Court of Appeals bearing directly upon the jurisdiction of this Honorable Court to accord to the plaintiffs and plaintiffs in intervention the relief which they seek. There the Court of Appeals made reference to an injunctive order entered by this Honorable Court purporting to control the operation of Friant Dam. On the subject that court declared, absent consent by the United States of America to an injunctive order, "there seems to be no color of an argument to the effect that * * * [this] district court had the jurisdiction to order its agent to enter upon and exercise dominion over United States property; and the [respondent] court well understood the situation. See Larson v. Domestic and Foreign Corp., * * *."[2] Predicated upon that conclusion the United States Court of Appeals for the Ninth Circuit declared that in the event this court did not vacate the injunctive order in question that it would take appropriate action in accordance with its opinion. Under the circumstances the injunctive order in question was vacated. In the decision last cited there was reviewed in detail the fundamental principles of the law in regard to the powers of the court to grant relief against the sovereign. In its analysis reference was made to one of the leading cases involving the powers of a court to control the activities of

[2] United States v. United States District Court, 206 F. 2d 303, 309 (C.A. 9, 1953).

the executive branch of the government.[3] In ascertaining whether it is in effect a proceeding against the National Government the court established this criterion: "The 'essential nature and effect of the proceeding' may be such as to make plain that the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration. * * * If so, the suit is one against the sovereign."

Examined in the light of the principle last quoted, it is evident that [2166] the declarations of this Court as revealed in Exhibit A of this suggestion interfere with the "public administration"; strike down a program established by the Congress to settle amicably the claims of owners of rights to the use of water on the San Joaquin River; preclude numerous claimants from receiving just compensation for rights for which the United States desires to make adjustment; enjoin the executive branch of the government from operating a physical solution which it considers essential in the proper administration of the San Joaquin River.[4]

To seek thus to enjoin the United States of America from effectuating the highly desirable amicable settlements in the manner prescribed in Exhibit A of this suggestion of which this memorandum is in support; to invade the executive branch of the gov-

[3] Land v. Dollar, 330 U.S. 731, 738 (1946).

[4] See in that regard the letter dated March 30, 1953, from Honorable Douglas McKay, Secretary of the Interior, to Honorable Herbert Brownell, Jr., Attorney General.

ernment in the manner disclosed, is violative of the sound principles of government that the courts will not usurp the powers of the several agencies of the executive branch of the government.[5] In the last cited case the Court reviews in great detail the question of the immunity of the National Government from suit; its freedom from restraint when performing authorized acts of the character involved in making voluntary and amicable restitution for rights of its citizens who claim their rights have been invaded. Especially pertinent in that regard are the highest Court's conclusions relative to injunctive relief: "The Congress has increasingly permitted such suits [for damages] to be maintained against the sovereign and we should give hospitable scope to that trend. But the reasoning is not applicable to suits for specific relief. For, it is one thing to provide a method by which a citizen may be compensated for a wrong done to him by the Government. It is a far different matter to permit a court to exercise its compulsive powers to restrain the Government from acting, or to compel it to act.

"There are the strongest reasons of public policy for the rule that such [injunctive] relief cannot be had against the [2167] sovereign. The Government,

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[5] United States v. County of Macon, 99 U.S. 582, 591 (1878); Vicksburg v. Vicksburg Waterworks Co., 202 U.S. 453, 471, 472 (1905); Marbury v. Madison, 5 U.S. 137, 170 (1803); United States v. Ice, 277 Fed. 373 (C.A. 8, 1921) affirmed 263 U.S. 497 (1924); Larson v. Domestic and Foreign Corp., 337 U.S. 682, 703-704 (1943).

as representative of the community as a whole, cannot be stopped in its tracks by any plaintiff who presents a disputed question of property or contract right. As was early recognized, 'The interference of the Courts with the performance of the ordinary duties of the executive departments of the government, would be productive of nothing but mischief * * *.'"[6]

It is manifest from an examination of this Honorable Court's comments respecting the program of settlement inaugurated by Congress that they are a far-reaching "exercise * * * [of] compulsive powers" restraining the Government. It undoubtedly has stopped the United States of America "in its tracts." At length the Highest Court in the decision from which those quoted excerpts are taken reviewed the principles respecting the immunity of the National Government from suit. Based upon the tenents of the law which are there discussed, it is evident that the United States of America has not waived its immunity from suit for injunctive process; has not consented to a proceeding against its officers which would allow a court to restrain a program, as has here been attempted, which has as its objective reimbursement for rights which may have been taken.

Important in connection with the statements in the preceding paragraph is the fact that a great burden has fallen upon the citizenry who are en-

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[6] Larson v. Domestic and Foreign Corp., 337, U.S. 682, 703, 704 (1948).

titled to have their claims resolved as prescribed by Congress. To deprive numerous citizens of the benefits emanating from the well established program to adjust their claims, has brought upon them untold harm and seriously curtailed the fulfillment of the plans of the State of California and of the United States of America in connection with the Central Valley.

Accordingly, the United States of America, respectfully denying that this Court has jurisdiction over it, has no alternative but to renew the program of amicable settlements and to effectuate on behalf of the citizenry, a program [2168] promulgated by the Congress and administered by the Secretary of the Interior, all in accordance with the suggestion of which this memorandum is in support. To the end that orderly administration may proceed to a desired conclusion, this Honorable Court is respectfully requested to recognize the precepts of the law enunciated by the authorities cited above.

UNITED STATES OF AMERICA,
/s/ J. LEE RANKIN,
Assistant Attorney General,
/s/ WILLIAM H. VEEDER,
Special Assistant to the Attorney General. [2169]

[Endorsed]: Lodged September 17, 1954.

[Title of District Court and Cause.]

ORDER

(1) Denying, Overruling, and Rejecting in part and striking in part "Suggestion" filed in the name of the United States and certain official defendants on October 14, 1954;

(2) Reopening Trial;

(3) Setting for Trial as reopened. [2360]

On June 11, 1953, the plaintiffs and the plaintiffs in intervention duly and regularly filed and served a Notice of Motion to join the United States of America as a party defendant and defendant in intervention in this action, which Motion was duly and regularly heard on June 24, 1953; but ruling thereon was deferred pending extraordinary writ proceedings commenced by the United States in the Ninth Circuit Court of Appeals, and terminated on August 4, 1953; thereafter, and on September 18, 1953, this Court made its Order granting the Motion to join the United States of America as a party defendant and defendant in intervention, and overruled the objections of the United States that this Court had no jurisdiction over the United States in this action. Service of the Complaints and Complaints in Intervention, as then amended and supplemented, with Summons thereon, were duly and regularly served on the United States in compliance with the Act of July 10, 1952 (43 U.S.C.A. 666) and the applicable Federal Rules of Civil Procedure.

Thereafter, and on December 14, 1953, the United States of America and the defendant officials of

the Bureau of Reclamation, Department of the Interior, filed a Motion to Dismiss the Complaints of plaintiffs and plaintiffs in intervention, which Motion was duly noticed for hearing, and was heard and argued on January 11, 1954, and on January 30, 1954, this Court made its order denying said Motion to Dismiss, and again overruled the objections of the United States, including the objection that this Court had no jurisdiction over the United States of America, and that the Complaint and Complaints in Intervention, as amended and supplemented, failed to state a claim for which relief may be granted the United States of America by this Court; thereafter, extraordinary writ proceedings [2361] were again commenced in the Ninth Circuit Court of Appeals, and were dismissed by the U. S. Court of Appeals on June 4, 1954. (213 F. 2d 818).

Thereafter, certain amendments and supplements to the plaintiffs' Complaint and the Complaints in Intervention of the City of Fresno and the Tranquillity Irrigation District, after notice and hearing, were ordered filed, and were duly and regularly served upon all parties, including the United States of America.

The United States of America has filed no pleading or Motion other than the above-mentioned Motion to Dismiss filed on December 14, 1953, and overruled on January 30, 1954, although the time therefor has long since expired.

Various documents have been filed in the name of the United States entitled "Suggestions." In

each of them the point is raised that this Court lacks jurisdiction for the reason that the United States of America has not waived its sovereign immunity, and/or for the further reason that the Complaints of Plaintiffs and Plaintiffs in Intervention, as amended and supplemented, fail to state a claim for which relief may be granted by this Court against the United States of America.

The last such "Suggestion" was filed on October 14, 1954, the concluding paragraph of which reads as follows:

"The United States of America and the subordinate officials, without submitting to the jurisdiction of this Court likewise respectfully suggest that this Court vacate the order which purports to join the United States of America, on the grounds and for the reason that the United States of America has not waived its sovereign [2362] immunity from suits for declaratory judgment or in actions for alleged 'illegal and unlawful' acts of its subordinate officials; and for the further and additional reason that the plaintiffs and complainants in intervention have failed to state against the United States of America a claim for which relief may be granted by this Court."

No Notice of a Motion to hear the aboyementioned "Suggestion," or any of them, has been made at any time.

The Federal Rules of Civil Procedure provide, by Rule 12(h), as follows:

"(h) Waiver of Defenses. A party waives all defenses and objections which he does not present

either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except * * * (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. * * * "

Rule 7(a) of the Federal Rules of Civil Procedure defines "pleadings" as follows:

"(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if leave is given under Rule 14 to summon a person who was not an original party; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer. [2363] (As amended Dec. 27, 1946, eff. March 19, 1948)."

Rule 7 (b) and (c) of the Federal Rules of Civil Procedure provide as follows:

"(b) Motions and Other Papers.

"(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

"(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all

motions and other papers provided for by these rules.

"(c) Demurrers, Please, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used."

The sole function of a "Suggestion," made under Rule 12(a), is to bring the question of jurisdiction to the attention of the Court. Much of the argument made in support of the "Suggestion" filed on October 14, 1954, is a rehash of the same contentions advanced to this Court at the hearing of the Motion to Join the United States as a party, in June, 1953, and in the two extraordinary writ proceedings in the Appellate Court, and the Motion to Dismiss filed in this Court. It has, thus, been repeatedly heretofore raised and repeatedly heretofore passed on, adverse to the contentions of the United States made in said "Suggestion."

These contentions have been persistently made and have been repeatedly overruled so that it is, and has been, the [2364] law of the case since January 30, 1954, if not from September 18, 1953, that this Court does have jurisdiction of the United States of America in the within action.

Obviously, a "Suggestion" made under Rule 12(h) is not a pleading, nor is it a motion under the Federal Rules of Civil Procedure. And, filing a "Suggestion" does not relieve a party from pleading or moving the Court under the Federal Rules of Civil Procedure.

On October 12, 1953, the plaintiffs and plaintiffs in intervention filed notice of and a motion to re-

open the trial, which motion was set for hearing on October 19, 1953. Said Notice was duly served upon all parties to the action, including the United States of America. On that date, i.e., October 19, 1953, said Motion was called, and duly and regularly continued for hearing to November 23, 1953, and thereafter from time to time called and duly and regularly continued for hearing as follows:

November 23, 1953 to January 11, 1954—then to February 15, 1954—then to March 8, 1954—then to April 19, 1954—then to May 17, 1954—then to July 12, 1954— then to August 16, 1954—then to September 20, 1954—then to October 25, 1954.

On October 15, 1953, the State of California, filed its Opposition to the Motion to Reopen; and various defendant Irrigation Districts filed Opposition thereto as follows: Madera Irrigation District on October 28, 1953; South San Joaquin Municipal Irrigation District on November 14, 1953; [2365] and Lindsay-Strathmore Irrigation District on October 16, 1953.

The issues involved in this lawsuit concern the water rights of approximately 1,000,000 acres of the most-productive and fertile land in California when it has water.

This matter should have been concluded long ago, and could have been, but out of respect to the United States Court of Appeals, during the pendency of the various writs, and in order that all parties might have ample opportunity to state their legal positions to this Court and raise any defenses which they might be justified in raising, the Court

from time to time deferred action on the Motion to Reopen, as above stated. Further delay not being justified, the Motion of plaintiffs to reopen was granted on October 25, 1954.

The plaintiffs and plaintiffs in intervention filed a further Motion to Reopen on November 3, 1954, which was duly and regularly noticed for hearing, and was heard on November 15, 1954.

At no time has the United States of America, or any of the defendant officials of the Bureau of Reclamation, filed any opposition to, or objection to, or objection to the hearing of, the Motion to Reopen filed October 12, 1953, or to the one filed November 3, 1954.

As heretofore indicated, the United States of America has filed no responsive pleading to the Complaints of the plaintiffs and/or plaintiffs in intervention, as amended or supplemented, or at all, but the parties are entitled to proceed with this lawsuit.

Good cause appearing therefor,

It Is Hereby Ordered that the "Suggestion" that this Court lacks jurisdiction for the reason that the United States of America has not waived its sovereign immunity, and for [2366] the further and additional reason that the Complaints of the plaintiffs and plaintiffs in intervention, as amended and supplemented, fail to state a claim for which relief may be granted by this Court against the United States of America are hereby denied, overruled, and rejected.

The remainder of the document entitled "Sug-

gestion that Case be Concluded," filed October 14, 1954, appears to be recitations in the form of argument, and good cause appearing therefor, It Is Hereby Ordered that the remainder of the said document filed October 14, 1954, except the paragraph hereinbefore quoted, be, and the same is, hereby ordered stricken.

It Is Hereby Further Ordered that the trial of the above entitled action be reopened to allow any party herein to introduce evidence discovered since July 3, 1953.

It Is Hereby Further Ordered, Adjudged and Decreed that the trial of the above entitled action be reopened for the purpose of introducing evidence for and against the defendant and the defendant in intervention, the United States of America, and the other defendants and defendants in intervention herein added since July 3, 1953, in the above entitled action.

It Is Hereby Further Ordered, Adjudged and Decreed that the trial of the above entitled action be reopened for the purpose of taking evidence under and upon the supplemental complaint of the plaintiffs, supplements, complaints in intervention of the City of Fresno and the Tranquillity Irrigation District, amendment and supplement to the complaint, as amended, of plaintiffs, and amendments and supplements to complaints in intervention, as amended, of the City of Fresno and the Tranquillity Irrigation District, and the answers of the various parties thereto. [2367]

It Is Hereby Further Ordered that the trial of

said case as reopened be, and the same is hereby set for December 7, 1954, at the hour of 10 o'clock A.M., in the Courtroom of the U. S. Court House, Fresno, California.

It Is Hereby Further Ordered that counsel for plaintiffs and plaintiffs in intervention forthwith serve a copy of the within Order under the Rules, and specifically they shall serve a copy thereof, by registered mail, upon the United States Attorney for the Southern District of California, and upon the Attorney General of the United States.

Dated: Los Angeles, California, November 18, 1954.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed November 18, 1954.

[Title of District Court and Cause.]

PLAINTIFFS AND COMPLAINANTS IN INTERVENTION, CITY OF FRESNO AND TRANQUILLITY IRRIGATION DISTRICT, REQUEST FOR ADMISSIONS BY THE UNITED STATES OF AMERICA

Plaintiffs and complainants in intervention, the City of Fresno and Transquillity Irrigation District request defendant United States of America within ten days after service of this request to make the following admissions for the purpose of

this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

1. That were it not for the construction and operation of Friant Dam and the regulation of the San Joaquin River at Friant Dam by the defendant officials and employees of the United States Bureau of Reclamation and defendant United States of America, 211,000 acre feet of San Joaquin River water annually would seep from the San Joaquin River into the underground percolating water stratas underlying the lands adjacent to the San Joaquin River in Madera and Fresno Counties between Friant Dam and Mendota pool and within the exterior boundaries of plaintiffs' Exhibit 31, expressly referred to and made a part of this Request for Admissions.

2. That except for the regulation of said San Joaquin River at Friant Dam by said defendant officials and employees of the United States Bureau of Reclamation and defendant United States of America, 146,000 acre feet of the waters of the said San Joaquin River would annually seep into the underground percolating water stratas underlying the lands within the boundaries of plaintiffs' Exhibit 31, between Friant Dam and Gravelley Ford.

3. That Harry Barnes has been a registered civil engineer in the State of California during all of the times from the filing of the above entitled action to date of this Request for Admissions, and testified in the trial of the above entitled action as a paid witness for the United States of America, being

paid for his said testimony out of the Treasury of the defendant United States of America. That the said Harry Barnes was placed on the stand to testify in the above entitled action by Joseph McPherson, then a special assistant to the Attorney General of the United States of America, and still an employee of the office of the United States Attorney General, and did testify in the above entitled action under the [2371] direction of said special assistant to the Attorney General of the United States, the said Joseph McPherson.

4. That under the future plans of operation and regulation of the waters of the San Joaquin River by Friant Dam, the defendant officials and employees of the United States Bureau of Reclamation and by the defendant United States of America, said defendants intend to, unless restrained by the above entitled court, release not more than 60,000 acre feet of water annually into the San Joaquin River below Friant Dam.

5. That Leland Hill is and was during all times since the commencement of the above entitled action a registered civil engineer of the State of California and is and was at all times since the commencement of the above entitled action, an agent and employee of the defendant United States of America; that from 1945 to 1950 the said Leland Hill was principal engineer of the United States Bureau of Reclamation in California working on all phases of the Central Valley Project in California and since 1950 has been Regional Water Rights Engineer for the office of the Regional

Counsel of the United States Bureau of Reclamation.

6. That the said Leland Hill testified in the above entitled action and under the complaints in intervention in the above entitled action as a paid officer and agent and employee of the defendant United States of America, and was paid a salary during the time he testified out of the Treasury of the United States of America; that the said Leland Hill testified in the above entitled action at all times under the direction of and was called to the witness stand in the above entitled action by a special assistant to the Attorney General of the United States of America, to wit, Mr. Joseph McPherson.

7. That the exact testimony hereinabove and in the preceding request for admissions set forth of the said Leland Hill in the above entitled action hereinabove referred to, is as follows:

"The Court: How many acre feet? Let us translate that into acre feet.

The Witness (Mr. Leland Hill): Close to 60,000 acre feet. [2372]

The Court: Now that is what you propose to release under the submitted plan of operation.

The Witness: No, sir, we do not propose to release that. We propose to release whatever the requirement is regardless of this. This is an estimate I have made of what we can expect.

The Court: The requirements to be?

The Witness: Yes.

Mr. Goldberg: But if the requirements turn out to be more, you will release more.

The Witness: If it is more we will release whatver it takes.

The Court: So that this is the release that could be expected to be made under your plan of operation.

The Witness: Yes, your Honor."

* * * * *

"The Court: Let us say then, 25 second-feet in January would be your opinion the maximum requirement for release in January?

The Witness: (Mr. Leland Hill): Yes. You can say 18 to 25.

The Court: In February?

The Witness: Well, in February it would be about the same. It may be as much as 30.

The Court: Let us say 30.

The Witness: All right, 30.

Mr. Rowe: What exhibit is that of Mr. Lee's?

The Court: 116.

In March?

The Witness: 65.

The Court: Why does it go up.

The Witness: Greater demand beginning in March. You have more evaporation, you have more evapo-transpiration, and not only that but the latter part of March some irrigation starts along the river.

The Court: These releases here are based on the assumption that the direct diversions from the

river and demands upon it are the same as exist today or approximately the same?

The Witness: Yes, we can consider it as such. I have been including in this estimate from 50,000 to 65,000 that it would be for the ultimate conditions. That would be a development greater than what is there now.

Mr. Child: As I understand it, these are demands, not releases. [2373]

The Witness: These are demands.

The Court: Demands, or call them anything you want.

The Witness: They are demands and the release would have to be made if there was no inflow into the river.

Mr. Child: That is right.

The Court: April?

The Witness: About 65.

The Court: May?

The Witness: Around 105.

The Court: June?

The Witness: About 135.

The Court: July?

The Witness: About 170 or 175.

The Court. 175?

The Witness: All right.

The Court: August?

The Witness: Around 155.

The Court: September?

The Witness: About 105.

The Court: Where does this maximum of 350 come in?

The Witness: That me be in some dry years, your Honor. You may have temperatures of 112 and 115 degrees and if we do why the more the evaporation. I am speaking now of an average condition.

The Court: October?

The Witness: 45.

The Court: November?

The Witness: 25 and December 25.

The Court: Now what does that total?

Mr. Rowe: December is 25 too.

The Witness: Yes. Well, it will total right close to 80 second-feet on the average.

The Court: How many acre-feet? Let us translate that into acre-feet.

The Witness: Close to 60,000 acre feet."

8. That the above testimony of the said Leland Hill is now and was at the time he so testified true as to the present and future plans and intention of said defendant officials and [2374] employees of said United States Bureau of Reclamation and said defendant United States of America as to releases of water below Friant Dam into the San Joaquin River and as to the future operations of Friant Dam by said defendants.

9. That the defendant officials, agents and employees of the United States Bureau of Reclamation and the defendant United States of America intend in the future to release an average of 80 second-feet of water below Friant Dam into the San Joaquin River.

10. That an average release of only 80 second-feet of water at Friant Dam will cause a continued

seepage of approximately 18 second-feet of San Joaquin River Water into the underground percolating water stratas adjacent to said San Joaquin River within the boundaries of plaintiffs' Exhibit 31, expressly referred to and made a part hereof.

11. That during the irrigation season of 1954, the defendant officials and employees of the United States Bureau of Reclamation and the defendant United States of America released continuously during said irrigation season approximately 200 second-feet of water out of Friant Dam into said San Joaquin River below Friant Dam and past the lands of the plaintiffs.

12. That said release of 200 second-feet into said San Joaquin River below Friant Dam to the pumps of the named plaintiffs herein, by said defendant officials and employees of said United States Bureau of Reclamation and the defendant United States of America, was insufficient to keep water at the pumps of the named plaintiffs without breaking of suction during said irrigation season of 1954, and said release damaged the wells and percolating water stratas underlying the said lands of the named plaintiffs and the class they represent owning lands within the boundaries of plaintiffs' Exhibit 31 expressly referred to and made a part hereof.

13. That the average seepage of water into the percolating water stratas between Friant Dam and Whitehouse with a continuous release of 200 second feet into said San Joaquin River below Friant Dam by said defendant the United States of America and said [2375] officials and employees of said

United States Bureau of Reclamation results in a seepage into the underground percolating water stratas supplied by said San Joaquin River and underlying the lands within the boundaries of plaintiffs' exhibit 31 expressly referred to and made a part hereof, of only 21 second-feet.

14. That under the plan of operation of said Friant Dam and planned future releases from said Friant Dam downstream from said San Joaquin River by the defendant officials and employees of said United States Bureau of Reclamation and the defendant United States of America, 265,000 acres of lands in Madera and Fresno Counties adjacent to said San Joaquin River between Friant Dam and Mendota Pool and lying within the boundaries of plaintiffs' exhibit 31 (which is expressly referred to and made a part hereof) will receive a diminished water supply, and eventually under said intended plan of operation of said Friant Dam and regulation of waters of said San Joaquin River at Friant Dam by said defendant officials and employees of the United States Bureau of Reclamation and the said defendant United States of America and the future plan of operation of and releases from Friant Dam into said San Joaquin River by said defendant officials and employees of said United States Bureau of Reclamation and said defendant United States of America, the water supply of 178,000 acres of said 265,000 acres of land in Fresno and Madera Counties adjacent to said San Joaquin River between Friant Dam and Mendota Pool and lying within the exterior boundaries of plain-

tiffs' exhibit 31, which is expressly referred to and made a part hereof, will be ultimately destroyed.

15. That Charles H. Lee, a witness for the plaintiffs and complainants in intervention in the above entitled action, is a civil engineer and at all times since the commencement of the above entitled case has been licensed to practice engineering in the State of California, is a graduate of the University of California in civil engineering of the class of 1905, has been in active practice in engineering for over 46 years has specialized and is a qualified engineer in hydraulics, surface and ground water hydrology, seepage [2376] into and from streams, evaporation, transpiration, well fluctuations, and yield, interpretation of ground water contour maps, safe yield of underground reservoirs and irrigation practices, from 1905 to 1906 was hydraulic engineer with the U. S. Geological Survey; from 1906 to 1911 was assistant engineer of the City of Los Angeles Power Aequeduct and for three years was in charge of surface and underground water investigations in Owens Valley for said City of Los Angeles; from 1919 to 1921 was President of the California State Water Commission; from 1921 to date Mr. Lee has engaged in private practice as a consulting engineer in San Francisco, California, including irrigation water supply; ground water investigations and utilization and investigations of stream flow, and is and was at all times mentioned in these requests for admissions qualified to testify on the matters in this said Request for Admissions set forth.

16. That the said Charles Lee testified in the above entitled action (and was cross examined by all of the attorneys of the defendants and defendants in intervention, including a complete cross examination by Mr. Joseph McPherson, then special assistant to the Attorney General of the United States of America, and now an attorney in the United States Department of Justice, as follows:

"Q. Now in your opinion, how many acres in total, including bluffs and beyond the bluffs would receive a diminished water supply if the State's plan went into operation?

A. (By Mr. Lee): Approximately 265,000.

Q. And, in your opinion, would there be any part of that acreage whose water supply would be eventually destroyed, and if so, how many acres?

A. Yes, there would be a portion of that, about 178,000.

Q. Acres? A. Acres * * *"

17. That the above testimony hereinabove set forth in the preceding request for admissions is true, and was true at the time said testimony of the said Charles Lee was given.

18. That there is now a shortage of water for irrigation, domestic and municipal use in the Fresno Irrigation District of [2377] over 100,000 acre feet annually, and an over-pumping from the underground percolating water stratas underlying said Fresno Irrigation District of 100,000 acre feet of water annually; that the City of Fresno is located within the boundaries of said Fresno Irrigation District.

19. That the construction and operation of Pine Flat Dam by the defendant United States of America on the Kings River of California will not cut down the shortage of water within the said Fresno Irrigation District, within the alluvial cone of the San Joaquin River, nor affect the percolation of water to or from the said San Joaquin River, nor increase the amount of underground percolating waters underlying said Fresno Irrigation District.

20. That the storage capacity of Pine Flat Dam is 1,000,000 acre feet. That of this 1,000,000 acre feet, 550,000 acre feet were originally allocated for irrigation storage to water users along said Kings River and 450,000 acre feet was allocated to flood control, but that during the year 1954, the defendant United States of America, with the cooperation of the present Honorable Secretary of the Interior, Mr. McKay, entered into a written contract to give defendant Pacific Gas & Electric Company 230,000 acre feet of storage space for water in Pine Flat Dam at a rate of $1.50 per acre foot per annum for four years for the generation of hydro-electric energy on two proposed dams to be built by said Pacific Gas & Electric Company on said Kings River under a permit heretofore issued by the Federal Power Commission; that said defendant United States of America and defendant officials and employees of said United States Bureau of Reclamation and said defendant Pacific Gas & Electric Company intend to renew said written contract at the expiration of said four year period, for an indefinite time.

21. That the said defendant United States of America, acting through the Honorable Secretary of the Interior, Mr. McKay, did during the year 1954 enter into a written contract with said Pacific Gas & Electric Company to deliver 230,000 acre feet of the [2378] water of the San Joaquin River originating in said watershed of said river and stored behind Friant Dam to said defendant Pacific Gas & Electric Company at a price of $3.50 per acre foot for the purpose of generating hydro-electric energy on said two hydro-electric generating plants to be constructed on said Kings River by said Pacific Gas & Electric Company through an exchange of the waters of said San Joaquin River so purchased by said Pacific Gas & Electric Company for waters of the Kings River.

21(a) That none of the said storage and uses of Friant Dam and Pine Flat Dam by said defendant Pacific Gas & Electric Company nor the use of the waters of the San Joaquin River for generation of hydro-electric energy by the defendant Pacific Gas & Electric Company through said exchange were provided or mentioned in the plan of feasibility originally adopted by the defendant United States of America and approved by the President of the United States December 2, 1935, and were not contemplated, provided for, authorized, or mentioned in any Act of Congress of the United States of America for the authorization, construction or operation of either Pine Flat Dam or Friant Dam.

22. That said plaintiffs' exhibit 106A, expressly referred to and made a part hereof, correctly shows

that the seepage loss from the San Joaquin River at a release of 200 second-feet of the waters of said San Joaquin River from Friant Dam is 21 cubic feet per second.

23. That the said San Joaquin River in its natural state supplies water in whole or in part to the underground percolating water stratas in that area between Friant Dam and Mendota Dam lying within the boundaries set forth in plaintiffs' exhibit 31, expressly referred to and made a part hereof.

24. That said Charles Lee testified that the seepage of the waters of said San Jcaquin River below Friant Dam and Gravelly Ford on said San Joaquin River into the percolating water stratas set forth within the boundaries of plaintiffs' exhibits 1 and 1A expressly referred to and made a part hereof, without regulation at [2379] Friant Dam during wet years, dry years and average years of runoff of said San Joaquin River is set forth in plaintiffs' exhibit 106A expressly referred to and made a part hereof.

25. That said testimony of the said Charles Lee set forth in the foregoing request for admissions is true.

26. That plaintiffs' exhibit 104 referred to and expressly made a part hereof, correctly and truly show the seepage loss of said San Joaquin River between Friant Dam and Gravelly Ford into the percolating water strata underlying the lands within the exterior boundaries of plaintiffs' exhibit 1A hereby expressly referred to and made a part hereof, at various flows of said San Joaquin River.

27. That the said San Joaquin River in its natural state unaffected by the past and intended future regulation of said San Joaquin River at Friant Dam by said defendant officials and employees of said United States Bureau of Reclamation and said defendant United States of America percolated water, and would, except for said regulation of said waters of said San Joaquin River at Friant Dam by said defendants continue to percolate water to the water stratas underlying and supplying the land set forth in plaintiffs' exhibit 31, expressly referred to and made a part hereof.

28. That the plaintiffs' plan of physical solution as shown by plaintiffs' exhibits 89 and 89A expressly referred to herein and expressly made a part hereof the same as if fully set forth herein, together with the releases of water from Friant Dam for the operations of said plaintiffs' plan of physical solution, which said releases are set forth in plaintiffs' exhibit 116 and 116A expressly referred to and made a part hereof will give San Joaquin River water to surface diverters owning riparian rights along the San Joaquin River between Friant Dam and Mendota Pool and will supply San Joaquin River Water to the underground percolating water stratas underlying lands within the boundaries of plaintiffs' exhibit 31 expressly referred to and made a part hereof in the same manner and amounts that a continuous average flow of 2400 [2380] second-feet of said San Joaquin River would furnish, and will save the destruction of the water supply of said 178,000 acres lying within the bound-

arfes of plaintiffs' exhibit 31, which said exhibit 31 is expressly referred to and made a part hereof; that plaintiffs' plan of physical solution is designed under recognized engineering standards, and would operate under recognized engineering standards and is the most feasible and economical method of supplying a surface water supply to the riparian, appropriative and prescriptive owners of rights to surface waters of the said San Joaquin River between Friant Dam and Gravelly Ford, and is the most feasible and economical way to supply the underground percolating water stratas underlying the lands set forth and described within the exterior boundaries of plaintiffs' exhibit 31, hereinbefore referred to, and is the most feasible and economical method of supplying the underground percolating water stratas underlying the said City of Fresno and Tranquillity Irrigation District, both now and in the future.

29. That alluvial cones of rivers of the San Joaquin Valley are the principal bearers of ground water in the San Joaquin Valley and in the southwestern portion of the United States, including said San Joaquin Valley.

30. That Tolman on "Groundwater" published by McGraw-Hill Book Company, as introduced as plaintiffs' exhibit 68 at the trial of the above entitled action, which said exhibit 68 is expressly referred to and made a part hereof, contains the following statement:

"Alluvial cones are the first bearers of available ground water. These are by far the most important

sources of water in the arid and semi-arid southwest."

31. That the above statement in said Tolman on "Groundwater" is true and particularly applies to the alluvial cone of the San Joaquin River between Friant Dam and Mendota Pool and between Friant Dam and Gravelly Ford.

32. That the lands of the named plaintiffs, excepting the named plaintiffs Jesse Martin and C. A. Hawkins, and the [2381] said Tranquillity Irrigation District, and the lands of the landowners within the boundaries of said Tranquillity Irrigation District, whose legal description is particularly set forth in the said Tranquillity Irrigation District's complaint in intervention on file herein, are all riparian to said San Joaquin River, and have riparian rights to and the owners of said lands are entitled to the beneficial use of said surface water of said river, as owners of said riparian lands for agricultural and domestic purposes on said lands of said named plaintiffs, complaint in intervention and owners.

33. That the methods of diversion and use by the named plaintiffs and complainant in intervention, the said Tranquillity Irrigation District, on their said lands more particularly set forth and described in plaintiffs' complaint on file herein and in the complaint in intervention of said Tranquillity Irrigation District, are reasonable methods of diversion and use of said waters of said San Joaquin River. That if any of the owners of said lands mentioned do not have riparian rights to use of said

waters of said San Joaquin River, the owners have prescriptive rights to the use of a reasonable amount of said waters for beneficial purposes, and did have at all times from and after the date of filing of plaintiffs' complaint on file herein.

34. That the said lands of said named plaintiffs, whose lands are set forth and described in plaintiffs' complaint on file herein, excepting Jesse Martin and C. A. Hawkins, and in the complaint in intervention of Tranquillity Irrigation District, and the landowners of lands within the boundaries of said Tranquillity Irrigation District, have received water by pumping directly from the San Joaquin River to said lands of said persons, for agricultural and domestic uses on said lands of said persons.

35. That some of the named plaintiffs, to wit: J. E. Cobb, Lawrence Cobb, Marjorie Sims, Everett Rank, Evelyn Lydia Rank, Duane Folsom, E. Florence Folsom, Holland Ranch & Development Company and L. L. Howard, pump water from wells located in the river bottoms of the San Joaquin River, and said named plaintiffs and their predecessors [2382] in interest have pumped water from wells located on said San Joaquin River bottom at all times mentioned in plaintiffs' complaint on file herein, between the bluff lines of said San Joaquin River between Friant Dam and Gravelly Ford Canal.

36. That some of the named plaintiffs, to wit: J. E. Cobb, Lawrence Cobb, C. A. Hawkins, City of Fresno, Tranquillity Irrigation District, Jesse

Frank Martin and J. E. "Red" Arnold, pump water, and their predecessors in interest (that is the former owners of said lands) pumped waters at all times mentioned in plaintiffs' complaint on file herein, from wells lying beyond the bluffs of said San Joaquin River, but within the boundaries of plaintiffs' exhibit 31, expressly referred to and made a part hereof, which said wells of the said named plaintiffs, J. E. Cobb, Lawrence Cobb, C. A. Hawkins, City of Fresno, Tranquillity Irrigation District, Jesse Frank Martin and J. E. "Red" Arnold now pump from the underground percolating water stratas now supplied and supplied during the times mentioned in plaintiffs' complaint on file herein, in whole or in part by percolation from said San Joaquin River and did so dump water at the time of the filing of the above entitled action and continuously thereafter.

37. That said named plaintiffs and the members of the class they represent pumping from underground percolating water stratas supplied in whole or in part by the waters of the San Joaquin River have rights analagous to riparian rights to the waters of the said San Joaquin River.

38. That the reduction and regulation of said flow of said San Joaquin River by Friant Dam to approximately 200 second-feet during the calendar year 1954, caused 6 wells pumping domestic and agricultural water of the said river between the bluff lines of the said San Joaquin River and between Highway 41 and Friant Dam to dry up dur-

ing the year 1955, caused a lowering of the water table in said lands.

39. That putting into operation of the proposed flow out of Friant Dam as testified to by the said Leland Hill will [2383] irreparably damage the lands of the named plaintiffffs and the landowners owning lands within the exterior boundaries of plaintiffs' exhibit 31 expressly referred to and made a part hereof.

40. That the City of Fresno pumps from the underground percolating waters lying under the City of Fresno from approximately 45 wells located in the City of Fresno or in territory immediately adjacent thereto, which said wells are supplied in whole or part from the underground percolating water supplied in whole or in part from said San Joaquin River.

41. That the water level of said wells of said City of Fresno has been continuously lowering since Friant Dam was placed in operation as a result of the regulation of the flow of the said San Joaquin River at Friant Dam by said defendant officials and employees of said United States Bureau of Reclamation and said defendant United States of America.

42. That said City of Fresno cannot safely pump more than 30,000 acre feet of water now or in the future from the underground percolating water stratas underlying the City of Fresno or in other places within the Fresno Irrigation District and needs an immediate supply of 50,000 acre feet of surface diversion to the municipally owned water

system of said City of Fresno from said San Joaquin River, and will eventually need a surface supply of 150,000 acre feet of surface diversion from said San Joaquin River.

43. That there is more than 50,000 acre feet of Class I water of the San Joaquin River stored behind and available at Friant Dam for the use of said City of Fresno at all times.

44. That Leland Hill, an agent and employee of the United States of America, testified in the above entitled action as follows

"Q. (By Mr. Rowe): Mr. Hill, then at the present time from your own figures, if they are pumping 53,000 acre feet in the City of Fresno now, and in the next 50 years you would only suggest pumping 30,000 acre feet, are they not overpumping in the City of Fresno 25,000 acre feet now?

A. They are definitely overpumping.

Q. Is that the amount, 25,000 acre feet?

The Court: It is all about 30,000? [2384]

The Witness: Yes." * * *

Q. How much surface in addition to the underground pumping?

The Court: 150,000 acre feet of water?

Mr. McPherson: 130,000 he said.

The Court: 130,000?

The Witness: (Mr. Hill). Yes, your Honor. Probably from the underground they could have a dependable supply that would be around 30,000 acre feet, and the rest would come from surface. * * *

The Witness: Your Honor, the operation studies that have been made and as they were originally

presented to the various districts included Class I water in an amount of 800,000 acre feet and the United States can contract that water up to that quantity without infringing upon the water supply from the project to the various districts that we now have contracts with or contemplate contracts with. There is approximately 50,000 acre feet of water that could be made available.

The Court: Where?

The Witness: In Millerton Lake, your Honor.

45. That said above quoted testimony of the said Leland Hill is true and was true at the time he so testified.

46. That Tranquillity Irrigation District and the landowners within said Tranquillity Irrigation District pump water for the lands within Tranquillity Irrigation District from water stratas underlying said lands within the boundaries of Tranquillity Irrigation District supplied in whole or part from water percolating from said San Joaquin River between Friant Dam and Mendota Pool.

47. That the said Tranquillity Irrigation District and the landowners within the boundaries of said Tranquillity Irrigation District have rights analagous to riparian rights to the underground percolating water originating in said San Joaquin River.

48. That the lands of said Tranquillity Irrigation District are riparian to said San Joaquin River and said Tranquillity Irrigation District, and the landowners within the boundaries of said Tranquillity Irrigation District are the owners of and en-

titled [2385] to use of 12% of the natural flow of the said San Joaquin River in excess of 1360 second feet measured at Whitehouse.

49. That the said Leland Hill testified in the above entitled action that Firant Dam could be raised 60 feet, that the raising of said Friant Dam would produce additional storage of 340,000 acre feet of water storage at Millerton Lake, and that the raising of Friant Dam 60 feet would produce at least average of 93,400 additional acre feet annually of Class I water in the reservoir outlets of said Millerton Lake Reservoir. That the above testimony of the said Leland Hill is true and was true at the time it was given in the above entitled action.

50. That since the close of the trial of the above entitled action in July of 1953, the Southern California Edison Corporation has completed the Vermillion Valley Reservoir on Mono Creek, a tributary of the San Joaquin River, resulting in an additional firm supply of 65,000 acre feet annually of water available for irrigation, municipal and domestic uses from said Friant Dam.

51. That the City of Fresno has now pending before the California Division of Water Resources applications number 6771, 6772, 7134, and 7135 for 156,000 acre feet of unappropriated waters of the said San Joaquin River, photostatic copies of which said applications have been introduced in evidence in the above entitled action as plaintiffs' exhibit 267 and are expressly referred to and made a part hereof.

52. That said foregoing applications to appropriate water of said San Joaquin River have first priority under the laws of the State of California and the United States of America over any other application now pending before the California State Division of Water Resources, or which may be filed for said unappropriated waters of said San Joaquin River.

53. That there are now more than 150,000 acre feet of unappropriated waters of said San Joaquin River in said San Joaquin River during years of normal run-off, and has been continuously [2386] since the filing of said applications by said City of Fresno.

54. That $1.15 per acre foot is a reasonable charge to be made by the said defendant officials and employees of the United States Bureau of Reclamation and defendant United States of America for storage of the waters of the said San Joaquin River in Friant Dam for and on behalf of said complainant in intervention the said City of Fresno, and said complainant in intervention said Tranquillity Irrigation District.

55. That Richard Boke was from the time of the filing of the above entitled action until July 1, 1953, the California Regional Director of the United States Bureau of Reclamation in California, and testified in the above entitled action that the cost of Friant Dam was "not over $15,000,000", his exact testimony being as follows:

"A. ——check to be exact, but the total cost of the Friant Dam and the Friant-Kern Canal is

again in the order of 80 million dollars, 85 million dollars.

The Court: That is the Friant Dam?

The Witness: And the canal.

The Court: And the canal?

The Witness: As a rough figure.

The Court: Can you break it down as to the cost of the canal?

The Witness: The canal was about 70 million dollars, although we have no final figure on it.

The Court: And the dam then about 10 million dollars?

The Witness: Around 15 million dollars."

56. That said testimony of the said Richard Boke is true.

57. That the said Richard Boke testified in the above entitled action that the toal cost of the Central Valley Project was approximately 400 million dollars, his exact testimony being as follows:

"A. The total cost of the project to date, with all of the initial features finished is about 400 million dollars.

Q. 400 million dollars? A. Yes." [2387]

58. That the above testimony in the foregoing request for admissions of the said Richard Boke is true, and has been true since the time it was given in the above entitled action.

59. That the said Richard Boke testified in the above entitled action that the water taken from Miller & Lux and from subsidiary canal companies for use on approximately 265,000 acres was and would be replaced with an equal amount of water

from the Delta-Mendota Canal and pumping plant, together with damages.

60. That the cost of the Delta-Mendota Canal and pumping plant was approximately 80 million dollars for constructing the facilities, including the Tracy Pumping Plant and the Delta-Mendota Canal to replace the water purchased by the U. S. Bureau of Reclamation from Miller & Lux.

61. That the annual cost of maintenance and operation of said land and pumping station is approximately $2,000,000 per year.

62. That there was no cost whatever to the Miller & Lux and subsidiary canal companies and their successor in interest for this water supplied from the Sacramento River.

63. That Ralph Boyd appeared in the above entitled action for the Office of the United States Attorney at Washington, D. C. gave the following statement and reason for the replacement by the defendant the United States of America of all waters of the San Joaquin River formerly used by Miller & Lux and subsidiary companies and payment for other waters of the San Joaquin River by said defendant the United States of America and the refusal of said defendant officials and employees of said United States Bureau of Reclamation to give the plaintiffs and the class they represent the same amounts of water they had formerly used before the regulations of the water of said San Joaquin River at Friant Dam by said defendants.

"Mr. Boyd: * * * The only explanation that is to be found anywhere about why the payment was

made is in the testimony of the then Commissioner of Reclamation, John C. Page, before a House Appropriations Committee [2388] in which, in substance, he said that the project was an emergency one and that they feared that Miller & Lux, if not paid off, because they were large, wealthy and powerful interests, would keep the project tied up in litigation for years, and so defeat its purposes.

He did say in addition——

Judge Hall: Surely Congress has not authorized the payment of blackmail money, have they?

Mr. Boyd: No, I don't think so.

He did say at the time that it appeared that they had rights in the river and then despite the clear provisions of both the authorizing Act of 1937 and Section 7 of the Reclamation Act of 1902 authorizing the acquisition by condemnation of any rights necessary for the project, he said that he felt that Miller & Lux could defeat us because they had no authority to take the water out of the watershed and no such limitation whatsoever appears in either statute.

Now that is the only explanation of that payment that we have been able to find anywhere."

64. That Otto W. Peterson is a graduate of the University of California in engineering and is a licensed civil engineer in the State of California and has engaged in the design and erection of dams and river control and hydro-electric projects in the United States and various foreign countries, has made investigations and written articles jointly with E. T. Hobson, supervising engineer for the United

States Bureau of Reclamation on Friant Dam. That from 1921 Mr. Otto Peterson was chief construction engineer of the Pacific Gas & Electric Company in charge of all major hydro-electric and steam constructions for said Pacific Gas & Electric Company and assisted in the design cost estimated and the raising of concrete dams for said corporation in California and for a major portion of said time had supervision and maintenance of waterways for said corporation, had charge of construction of approximately 25 major concrete and earthfilled dams on California streams and designed and constructed many check, crib and collapsible dams on California streams.

65. That the said Otto Peterson testified that it would cost approximately $1,132,501 to construct the collapsible check dams recommended by Mr. Lee set forth in plaintiffs' plan of physical solution hereinaboye referred to, and $16,400 per annum [2389] to operate the said 14 check dams set forth in plaintiffs' plan of physical solution, viz, plaintiffs' exhibits 89 and 89A which are expressly referred to and made a part hereof, the same as if fully set forth herein.

66. That the said Otto Peterson testified in the above entitled action that the collapsible check dams set forth in plaintiff's plan of physical solution, to wit, plaintiffs' exhibits 89 and 89A are designed in accordance with proper engineering standards, in accordance with existing engineering standards of private hydraulic electric utilities operating in California, and in accordance with engineering

standards of the defendant Pacific Gas & Electric Company.

67. That the testimony of the said Otto Peterson referred to in request for admissions No. 65 and 66 is true.

68. That the said Otto Peterson has been fully cross examined on the above by Mr. Jospeh McPherson, special assistant to the Attorney General of the United States.

70. That the office of the Attorney General of the United States has regularly been furnished with a copy of the entire transcript of all evidence and proceedings in the above entitled case, including the evidence and the complaints in intervention and all exhibits thereon, and all pleadings herein, and now has copies of all exhibits in their possession referred to in this Request for Admissions.

71. That the defendant United States of America furnished all of the witnesses giving testimony for and on behalf of the defendant officials and employees of the United States Bureau of Reclamation, and paid for said testimony and expenses of the witnesses appearing in the above entitled action for and on behalf of said United States Bureau of Reclamation, and the cost of engineering research and of preparing the exhibits introduced for and on behalf of said defendant officials and employees of said United States Bureau of Reclamation and the introduction of all evidence for and on behalf of the defendant officials and employees [2390] of said United States Bureau of Reclamation, and furnished and paid for all attorneys appearing for

and on behalf of said defendant officials and employees of said United States Bureau of Reclamation, which said witnesses at all times herein mentioned testified under the direction of a special assistant to the Attorney General of the United States and for the cross examination of plaintiffs and complainants in intervention witnesses, and a special assistant to the Attorney General of the United States appeared for the defendant United States of America on various motions in the above entitled action and actions in intervention.

72. That wherever the words "second-feet" are used in this Request for Admissions, the same are used in the sense of and have the meaning of "cubic feet per second".

73. That the average run-off and the average flow of the San Joaquin River between Friant Dam and Mendota Pool is 2400 feet per second.

74. That it is true that the claims, contentions, denials and affirmations of the various parties referred to in Paragraph IV of the Amendment and Supplement to Plaintiffs' Complaint on file herein, and expressly made a part hereof, have been made and that all of the allegations contained in said Paragraph IV of Plaintiffs' Amendment and Supplement to Complaint on file herein are true.

75. That it is true the claims, contentions, denials and affirmations of the various parties referred to in Paragraph IV of the Amendment and Supplement to Complaint in Intervention of the City of

Fresno on file herein, and made a part hereof, have been made and that all of the allegations contained in said Paragraph IV of Complainants' Amendment and Supplement to Complaint in Intervention on file herein are true.

76. That it is true the claims, contentions, denials and affirmations of the various parties referred to in Paragraph IV of the Amendment and Supplement to Complaint in Intervention of Tranquillity Irrigation District on file herein and made a part [2391] hereof have been made, and that all of the allegations contained in said Paragraph IV of complainant's Amendment and Supplement to Complaint in Intervention on file herein are true.

77. That there do exist the controversies set forth and referred to in Paragraph V of the Amendment and Supplement to Plaintiffs' Complaint, expressly referred to and made a part hereof.

78. That there do exist the controversies set forth and referred to in Paragraph V of the Amendment and Supplement to Complaint in Intervention of the City of Fresno, expressly referred to and made a part hereof.

79. That there do exist the controversies set forth and referred to in Paragraph V of the Amendment and Supplement to Complaint in Intervention of Tranquillity Irrigation District expressly referred to and made a part hereof.

80. That all of the allegations set forth in Paragraph V of Plaintiffs' Amendment and Supplement to Complaint, expressly referred to and made a part hereof, are true.

81. That all of the allegations set forth in Paragraph V of Amendment and Supplement to Complaint in Intervention of the City of Fresno, expressly referred to and made a part hereof, are true.

82. That all of the allegations set forth in Paragraph V of the Amendment and Supplement to Complaint in Intervention of the Tranquillity Irrigation District, expressly referred to and made a part hereof are true.

83. That Otto Peterson testified before the above entitled Court that Friant Dam could be raised 60 feet for 75% of the cost of construction of Friant Dam.

84. That the testimony of Leland Hill referred to in request for admission (6), (7) and (8) was given before the above entitled Court on or about February 3, 1953; that the testimony of Charles Lee referred to in request for admission (16) and (17) was given before the above entitled Court March 15, 1952; that the testimony of Leland Hill referred to in request for admission No. (44) was given before the above entitled Court February 3, 1953; [2392] that the testimony given by the said Leland Hill referred to in request for admission No. (49) was given before the above entitled Court on or about June 11, 1953; that the testimony of Richard Boke referred to in request for admission Nos. (55), (56), (57), (58) and (59) was given on or about the 30th day of January, 1952; that the testimony of Otto Peterson refefred to in request for admission Nos. (66), (67) and (68) was given

before the above entitled Court on or about April 2, 1952.

85. That the riparian lands adjacent to said San Joaquin River at the time of the filing of said above entitled Complaint and continuously thereafter date are correctly shown on Exhibit A of Plaintiffs' Amendment to Complaint dated July 25, 1951.

Dated this 19th day of November, 1954.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs.

/s/ CLAUDE L. ROWE,
/s/ O. M. OZIAS, CLR,
Attorneys for Complainant in Intervention, City of Fresno.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District. [2393]

[Endorsed]: Filed November 22, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Fresno—ss.

Marcia C. Mott, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her

business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of 18 years of age and not a party to the above entitled action.

That on the 19th day of November, 1954, she deposited in the United States mails in the post office at Fresno, California, in an envelope bearing the requisite postage, in the above entitled action:

1. Request for Admissions by Defendant United States of America.
2. Affidavit of Service by Mail.
3. Order of Court dated November 18, 1954.

addressed to each of the following:

Robert H. Gerdes and William B. Kuder, attorneys at law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company.

Gilbert H. Jertberg, Attorney at Law, Security Bank Building, Fresno, California, Attorney for Pacific Gas & Electric Company.

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, Attorney for Consolidated Irrigation District (Ronald Harris and the word California crossed out in ink.) [2395]

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts.

Maddox & Abercrombie & Erling H. Kloster, At-

torneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District.

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, Attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts.

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts.

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, Attorney for Stone Corral Irrigation District.

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Washington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America.

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America.

Green, Green & Plumley, Attorneys at Law, 219

South D Street, Madera, California, attorneys for Chowchilla Water District, et al.

David E. Peckinpah and Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District.

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America, and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities.

Harold Weise, Assistant United States Attorney, Federal Building, San Francisco, California.

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ MARCIA C. MOTT.

Subscribed and sworn to before me this 10th day of November, 1954.

[Seal] /s/ CLAUDE L. ROWE,
Notary Public in and for said
County & State. [2396]

[Endorsed]: Filed November 22, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF MAILING

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, hereby certify that on the 24th day of November, 1954, I sent by mail to all the parties checked on the attached sheet "List of Counsel", and by registered mail to Herbert Brownell, Jr., Attorney General of the United States and to Laughlin E. Waters, United States Attorney for the Southern District of California, addressed to them at the post office as stated on said "List of Counsel", in the above entitled matter, a copy of the "Order setting, and Notice of Pre-Trial", filed on Nov. 23, 1954.

EDMUND L. SMITH,
Clerk,
/s/ By S. W. STACEY,
Deputy Clerk. [2429]

LIST OF COUNSEL

Claude L. Rowe, For Plaintiffs and City of Fresno; Tranquillity Irrigation Dist., Fresno, Calif.

Maddox & Abercrombie, By James K. Abercrombie, Erling H. Kloster, For Terra Bella Irrigation Dist., Porterville Irrigation Dist., Exeter Irrigation Dist., Delano-Earlimart Irrig. Dist.

James R. McBride, E. I. Feemster, For Lindsay-Strathmore Irrig. Dist., Ivanhoe Irrigation District, Lindmore Irrigation District.

Leroy McCormick, For Orange Cove Irrigation Dist., Saucelito Irrigation Dist.

John R. Locke, For Stone Corral Irrig. Dist.

Henry & Kuney, For Tulare Irrigation District, Lower Tule River Irrig. Dist., Visalia, Calif.

Green, Green & Plumley, By Denslow Green, For Chowchilla Water District, Madera, Calif.

David E. Peckinpah, Harold M. Child, For Madera Irrigation District, Fresno, Calif.

J. O. Reavis, For Southern San Joaquin Municipal Utility District, Delano, Calif.

Gerdes & Kuder, By Gilbert H. Jertberg, For Pacific Gas & Electric Co., Fresno, Calif.

Ronald Harris, For Consolidated Irrig. Dist., Fresno, Calif.

Harold A. Parichan, For Emil Schram, Fresno, Calif.

Edmund G. Brown, Atty. General, B. Abbott Goldberg, Deputy Atty. Gen., George G. Grover, Deputy Atty. Gen., For State of California, San Francisco, Calif.

Herbert Brownell, Jr., Atty. General, J. Lee Rankin, Asst. Atty. General, Laughlin E. Waters, U. S. Attorney, Asst. U. S. Atty., For United States of America and official Defendant, Washington, D. C., Los Angeles, Calif.

EDMUND L. SMITH,
Clerk,
/s/ By S. W. STACEY,
Deputy Clerk. [2430]

[Endorsed]: Filed November 24, 1954.

[U. S. Post Card—Registered Mail.]

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1. /s/ Herbert Brownell
2. /s/ George (Illegible)

Date of delivery: 11-26, 1954.

[Endorsed]: Filed November 29, 1954.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT IN INTERVENTION AND SUPPLEMENTAL COMPLAINT IN INTERVENTION

Come now Clyde Spencer, sued and served herein as supervising Engineer, California Projects, United States Bureau of Reclamation; Martin Blote, sued

and served herein as Superintendent of Operations for the Central Valley Project, United States Bureau of Reclamation; Edwin F. Sullivan, sued and served herein as Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, denying that this Court has jurisdiction and for answer to the Complaint in Intervention and the Supplemental Complaint in Intervention of the Tranquillity Irrigation District, Raymond Costales, William E. Clotz, N. D. Hughes, Iva Johnson and Frank Miller, say:

First Defense

The Complaint in Intervention and the Supplemental Complaint in Intervention of the above set forth Complainants in Intervention fail to state [2479] claims against these defendants, or either of them, for which relief may be granted.

Second Defense

The Secretary of the Interior is an indispensable party to this cause and the Court does not have jurisdiction over him. Similarly the Commissioner of the Bureau of Reclamation is an indispensable party to this cause and the Court does not have jurisdiction over him.

Third Defense

It affirmatively appears from the Complaint in Intervention and the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, that the action is, in fact and in law,

an action against the United States of America. The United States of America has not waived its immunity from suit in actions of the character here involved and this Court is therefore without jurisdiction.

Fourth Defense

It affirmatively appears from the Complaint in Intervention and the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, that the Complainants in Intervention have a plain, adequate, and complete remedy at law, by reason of which this action cannot be maintained.

Fifth Defense

This Court does not have jurisdiction to entertain an action of the character here involved which will result in the invasion or usurpation of the powers of the Executive and Legislative branches of the Government of the United States of America.

Sixth Defense

Each and every claim of the above-named Complainants in Intervention as asserted by them are in conflict with each other, are antagonistic one to the other, and are in conflict with and antagonistic to the alleged claims of each of the parties of the alleged class they purport to represent and it is therefore denied that the named parties complainant are representative of the alleged class of landowners under the circumstances set forth in the Complaint in Intervention and the Supplemental Complaint in Intervention. [2480]

Seventh Defense

I.

Answering the allegations of paragraph I of the first cause of action of the Complaint in Intervention and paragraph II of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, the defendants Spencer, Blote and Sullivan admit that they are employed by the United States of America and that the allegations in the paragraphs in question in regard to the positions which they hold as employees are substantially correct; that the districts named in paragraph I of the first cause of action of the Complaint in Intervention, and that the Consolidated Irrigation District, the International Water District, Homeland Reclamation District No. 780, and Nunes Water District named in paragraph II of the Supplemental Complaint in Intervention, are public corporations organized and existing under the laws of the State of California; that the Pacific Gas & Electric Company referred to in paragraph II of the Supplemental Complaint in Intervention, is a corporation organized and existing under and by virtue of the laws of the State of California engaged in the business of conducting a public utility; in regard to all other allegations respecting the Pacific Gas & Electric Company the defendants are without sufficient knowledge or information to form a belief as to the truth of the averments and those allegations are therefore denied.

Further answering the allegations of paragraph

I of the first cause of action of the Complaint in Intervention these defendants deny generally and specifically each and every other material allegation of said paragraph, alleging to the contrary that they do not have and have never had full and complete charge, management and control of the Central Valley Project and in particular Friant Dam, Friant-Madera Canal and Friant-Kern Canal, components of the Central Valley Project; that none of these defendants has or claims to have power or authority to do or perform any act in the administration of the Central Valley Project and in particular Friant Dam, Friant-Madera Canal and Friant-Kern Canal, independent of or separate from the powers conferred upon the Secretary of the Interior and the Commissioner of the Bureau of Reclamation, neither of whom is before this Court, and who are indispensable parties to this action; that each and every act performed by them which is subject to the direction and control of the [2481] last named officials of the Department of the Interior, are authorized by the Congress of the United States by and through the Reclamation Act of June 17, 1902 (32 Stat. 388); April 8, 1935 (49 Stat. 115); June 22, 1936 (49 Stat. 1622); August 26, 1937 (50 Stat. 844) and acts amendatory thereof and supplemental thereto; that all of the acts and things done by these defendants or either of them in connection with the Central Valley Project, including those acts and things complained of in the Complaint in Intervention and Supplemental Complaint in Intervention have been and each of them are under and

pursuant to lawful authority and subject to the direction and control of the Secretary of the Interior of the United States of America, and the Commissioner of the Bureau of Reclamation of the United States of America.

II.

The defendants Spencer, Blote and Sullivan answering paragraph II of the first cause of action of the Complaint in Intervention, admit that the Tranquillity Irrigation District is a public corporation organized and existing under and by virtue of the laws of the State of California; that the Tranquillity Irrigation District is located in Fresno County, California.

The defendants Spencer, Blote and Sullivan deny specifically and generally each and every other allegation in paragraph II of the first cause of action of the Complaint in Intervention. It is likewise affirmatively alleged that this Court is without jurisdiction to enter an order for any plan of physical solution as alleged in the said paragraph II of the first cause of action of the Complaint in Intervention; and specifically deny each and every other allegation in regard to the alleged plan of physical solution.

III.

The defendants Spencer, Blote and Sullivan answering paragraph III of the first cause of action of the Complaint in Intervention deny generally and specifically each and every allegation therein contained and deny that they or any of them are main-

taining Friant Dam across the San Joaquin River or that they are maintaining Friant-Kern Canal and the Madera Canal or any other structures therein described, but to the contrary assert that Friant Dam and the mentioned canals and other structures described are owned and operated by the United [2482] States of America and that each and every act alleged in the aforesaid paragraph III of the first cause of action of the Complaint in Intervention are acts which are on behalf of the said United States of America; that the construction, operation and maintenance of Friant Dam, the Friant-Kern Canal and the Madera Canal and the other structures described therein, and all other acts in connection with the Central Valley Project by the defendants are fully in accordance with the Congressional authorization to which reference has been made in paragraph I of this Defense above, and all those acts alleged in the said paragraph III were done pursuant to and in accordance with the directions of the Secretary of the Interior and the Commissioner of the Bureau of Reclamation.

Further answering, the defendants Spencer, Blote and Sullivan deny generally and specially each and every allegation in said paragraph III of the first cause of action of the Complaint in Intervention.

IV.

Answering paragraph III of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, the defendants Spencer, Blote and Sullivan admit the execution of the con-

tract of May 25, 1954, and assert that the contract itself is the best evidence of its contents.

Further answering the aforesaid paragraph III of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, the defendants Spencer, Blote and Sullivan generally and specifically deny each and every other material allegation set forth therein.

V.

The defendants Spencer, Blote and Sullivan generally and specifically deny each and every allegation contained in the second paragraph numbered III of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention.

VI.

The defendants Spencer, Blote and Sullivan answering paragraph IV of the first cause of action of the Complaint in Intervention deny generally and specifically each and every allegation of the said paragraph IV, asserting [248] that the alleged illegal and unlawful impounding, storage and diversion of the water at Friant Dam are duly authorized by the Acts of Congress to which reference has been made in paragraph I above and that the storage, diversion and transportation of the water as alleged in the said paragraph IV are pursuant to that Congressional authorization and pursuant to instructions from the Secretary of the Interior of the United States of America and the Commissioner of the Bureau of Reclamation who are indispensable

parties to this proceeding and who are not before this Court. Accordingly, it is realleged and reiterated that this Court is without jurisdiction to entertain this proceeding.

VII.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph V of the first cause of action of the Complaint in Intervention of the above-named Complainants in Intervention, deny that the impounding and storage of water in Friant Dam and the diversion, transportation and uses of it are illegal or unlawful; asserting that whatever acts done and performed by them were subject to the control and direction of the Secretary of the Interior and the Commissioner of the Bureau of Reclamation and performed in full and complete accordance with the acts of Congress referred to in paragraph I of the Seventh Defense; further alleging that the United States of America is the owner and operator of Friant Dam and appurtenant works.

Further answering, the defendants Spencer, Blote and Sullivan generally and specially deny each and every allegation set forth in the said paragraph V of the first cause of action of the Complaint in Intervention of the above-named Complainants in Intervention.

VIII.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph VI of the first cause of action of the Complaint in Interven-

tion of the above-named Complainants in Intervention admit the material allegations of that paragraph.

IX.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph VII of the first cause of action of the Complaint in Intervention [2484] of the above-named Complainants in Intervention generally and specifically deny each and every allegation therein set forth.

X.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph VIII of the first cause of action of the Complaint in Intervention of the above-named Complainants in Intervention generally and specifically deny each and every allegations therein set forth and particularly deny that the properties involved are subject to jurisdiction and control of this Court; and further in that regard refer to the Sixth Defense set forth in this answer and reaffirm and reallege each and every allegation therein contained as fully as if the same were set forth in this paragraph.

Eighth Defense

I.

The defendants Spencer, Blote and Sullivan, answering the allegations in paragraph I of the second cause of action of the Complaint in Intervention of the above-named Complainants in Interven-

tion generally and specifically deny each and every allegation therein set forth and specifically deny that this is or could be a representative action or that the named Complainants in Intervention could be or are representative of a class, but to the contrary each and every right of all of the parties of the alleged class are antagonistic and in conflict one with the other.

II.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph II of the second cause of action of the Complaint in Intervention of the above-named Complainants in Intervention generally and specifically deny each and every allegation therein set forth.

III.

The defendants Spencer, Blote and Sullivan, answering the allegations of paragraph III of the second cause of action of the Complaint in Intervention of the above-named Complainants in Intervention generally and specifically deny each and every allegation therein set forth. [2485]

IV.

The defendants Spencer, Blote and Sullivan, answering paragraph IV of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, deny each and every allegation set forth in that paragraph.

Further answering, the defendants Spencer, Blote

and Sullivan declare that the rights therein referred to are so totally without description and so vague that it is impossible to answer in regard to them.

V.

The defendants Spencer, Blote and Sullivan, answering paragraph V of the Supplemental Complaint in Intervention of the above-named Complainants in Intervention, generally and specifically deny each and every allegation set forth in that paragraph.

Ninth Defense

It is affirmatively alleged by the defendants Spencer, Blote and Sullivan that the above-named Complainants in Intervention in substance seek relief which necessarily affects the rights and properties of the United States of America; that would require action by the Congress of the United States and amendment of basic laws if it were to be effectuated; that under the circumstances this Court does not have jurisdiction of the rights in question and is without jurisdiction to entertain a proceeding of the kind and character here involved, or to accord to the Complainants in Intervention above-named the relief for which they pray in their Complaint in Intervention and their Supplemental Complaint in Intervention. It is likewise affirmatively alleged that if this Court has jurisdiction, the above-named Complainants in Intervention have been guilty of gross laches and unreasonable delay in asserting any claim to rights to the use of water in the San

Joaquin River for they knew and have known for many years that the State of California has planned the construction of the Central Valley Project, including the structures concerning which complaint is here made; that Complainants in Intervention knew and have known that for a period upwards to twenty years the United States of America has expended millions of dollars in the investigation, construction and operation of Friant Dam; and the above-named Complainants in Intervention have known [2486] that construction was in fact undertaken in 1938 to build Friant Dam and the appurtenant structures referred to in the Complaint in Intervention and the Supplemental Complaint in Intervention; that the above-named Complainants in Intervention have failed to protest the construction of these vast works, but to the contrary have supported and encouraged the undertaking.

Tenth Defense

It affirmatively appears from the Complaint in Intervention that a public use in favor of the United States of America has and is attached to all rights to the use of water in the San Joaquin River which are here involved and for that reason this action cannot be maintained.

Eleventh Defense

The United States of America through the exercise of its power of eminent domain has taken all rights to the use of water in the San Joaquin River which are required for the operation of Friant Dam

and its appurtenant works, all components of the Central Valley Project; that fee simple title to all the rights to the use of water required for the operation of the Central Valley Project has at all times since that taking resided in the United States of America; that at no time have the defendant subordinate officials Spencer, Blote and Sullivan claimed any right, title or interest in and to any rights to the use of water in the San Joaquin River.

Wherefore these defendants Spencer, Blote and Sullivan pray:

1. That this Honorable Court dismiss the Complaint in Intervention and the Supplemental Complaint in Intervention of the above-named Complainants in Intervention for want of jurisdiction over the property and rights to the use of water of the United States of America; for want of jurisdiction over the United States of America, for failure to state a claim against the defendants Spencer, Blote and Sullivan; and for the reason that the Court could not grant the mandatory or prohibitory injunctive relief including the entry of an order purporting to effectuate a physical solution for which the above-named Complainants in Intervention pray in this proceeding. [2487]

2. That the prayers for relief of the Complaint in Intervention and the Supplemental Complaint in Intervention of the above-named Complainants in Intervention be denied by this Honorable Court.

3. That this Honorable Court award to these defendants their costs.

Dated: December 3, 1954.

/s/ J. LEE RANKIN,
Attorney General,
/s/ WILLIAM H. VEEDER,
Special Assistant to the
Attorney General. [2488]

[Endorsed]: Filed December 6, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF CLAUDE L. ROWE IN SUPPORT OF APPLICATION ON COMPLAINT HEREIN AS AMENDED AND SUPPLEMENTED AND ON THE COMPLAINTS IN INTERVENTION AS AMENDED AND SUPPLEMENTED OF THE CITY OF FRESNO AND TRANQUILLITY IRRIGATION DISTRICT FOR DEFAULT JUDGMENT AGAINST DEFENDANT AND DEFENDANT IN INTERVENTION THE UNITED STATES OF AMERICA [2547]

State of California,
County of Fresno—ss.

Claude L. Rowe, being first duly sworn, deposes and says that he is Attorney for the plaintiffs herein, attorney for Tranquillity Irrigation District, Complainant in Intervention, and one of the attorneys for the City of Fresno, Complainant in Intervention; that on or about the 18th day of Novem-

ber, 1954, the above entitled Court filed an order in the above entitled matter containing the following statements in regard to service of process under the above entitled complaint, as amended and supplemented, and complaints in intervention as amended and supplemented of Tranquillity Irrigation District and City of Fresno, part of which order reads as follows:

"On June 11, 1953, the plaintiffs and the plaintiffs in intervention duly and regularly filed and served a Notice of Motion to join the United States of America as a party defendant and defendant in Intervention in this action, which Motion was duly and regularly heard on June 24, 1953; but ruling thereon was deferred pending extraordinary writ proceedings commenced by the United States in the Ninth Circuit Court of Appeals, and terminated on August 4, 1953; thereafter, and on September 18, 1953, this Court made its order granting the Motion to join the United States of America as a party defendant and defendant in intervention and overruled the objections of the United States that this Court had no jurisdiction over the United States in this action. Service of the complaints and complaints in intervention, as then amended and supplemented, with summons thereon, were duly and regularly served on the United States in compliance with the Act of July 10, 1952 (43 U.S.C.A. 666) and the applicable Federal Rules of Civil Procedure.

"Thereafter, and on December 14, 1953, the United States of America and the defendant officials of the Bureau of Reclamation, Department of

the Interior filed a motion to dismiss the complaint of plaintiffs and plaintiffs in intervention, which Motion was duly noticed for hearing, and was heard and argued on January 11, 1954, and on January 30, 1954, this Court made its order denying said Motion to Dismiss and again overruled the objections of the United States, including the objection that this Court had no jurisdiction over the United States of America, and that the complaint and complaints in intervention as amended and supplemented failed to state a claim for which relief may be granted the United States of America by this Court; thereafter extraordinary writ proceedings were again commenced in the Ninth Circuit Court of Appeals and were dismissed by the United States Court of Appeals on June 4, 1954 (213 F. 2d, 818).

"Thereafter, certain amendments and supplements to the plaintiffs' complaint and the complaints in intervention [2549] of the City of Fresno and the Tranquillity Irrigation District, after notice and hearing were ordered filed and were duly and regularly served upon all parties, including the United States of America.

"The United States of America has filed no pleadings or motion other than the above mentioned Motion to Dismiss filed on December 14, 1953, and overruled on January 30, 1954, although the time therefor has long since expired.

"Various documents have been filed in the name of the United States entitled "Suggestions". In each of them the point is raised that this Court lacks jurisdiction for the reason that the United

States of America has not waived its sovereign immunity and/or for the further reason that the complaints of plaintiffs and plaintiffs in intervention as amended and supplemented, fail to state a claim for which relief may be granted by this Court against the United States of America."

That in addition to the other matters filed in the name of the United States of America and referred to in said order, the said United States of America did on or about the 3rd day of December, 1954 file what purported to be an answer to plaintiffs and complainants in intervention, the City of Fresno and Tranquillity Irrigation District's requests for admissions by the defendant and defendant in intervention, the United States of America.

That upon the above entitled record, the said plaintiffs and complainants in intervention, the said City of Fresno and Tranquillity Irrigation District are entitled to apply for default judgment against said defendant and defendant in intervention the United States of America.

/s/ CLAUDE L. ROWE.

Subscribed and sworn to before me this 6th day of December, 1954.

[Seal] /s/ MARCIA C. MOTT,
Notary Public in and for said County and State. [2550]

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

APPLICATION (MOTION) FOR DEFAULT JUDGMENT AGAINST DEFENDANT AND DEFENDANT IN INTERVENTION THE UNITED STATES OF AMERICA [2551]

Come Now the Plaintiffs herein and the Complainants in Intervention, the City of Fresno and Tranquillity Irrigation District and apply to (move the) above entitled Court for judgment (default) against the defendant the United States of America and the defendant in intervention the United States of America, as prayed for in the complaint on file herein as amended and supplemented and as prayed for in the complaints in intervention, as amended and supplemented of the City of Fresno and Tranquillity Irrigation District. Said application (motion) will be based upon the affidavit of Claude L. Rowe, filed and served herewith, and upon all of the pleadings, papers, documents, exhibits, evidence and proceedings on file herein, given or had herein, and will be made on the grounds that said plaintiffs and complainants in intervention, the City of Fresno and Tranquillity Irrigation District, are entitled to the granting of the said judgment (default) under Rule 55 of the Federal Rules of Civil Procedure and other Federal Rules of Civil Procedure, and upon the ground that the granting of the same would be in the interest of justice, and upon the further ground that said defendant and defendant in intervention the United States of America has failed to file any answer to plaintiffs'

complaint as amended and supplemented on file herein, and has failed to file an answer to the complaints in intervention of the City of Fresno and Tranquillity Irrigation District, as amended and supplemented on file herein.

Dated this 7th day of December, 1954.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs,

/s/ CLAUDE L. ROWE,
/s/ C. M. OZIAS,
Attorneys for Complainant in Intervention, the City of Fresno,

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District [2552]

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

NOTICE OF APPLICATION FOR JUDGMENT AGAINST DEFENDANT UNITED STATES OF AMERICA ON PLAINTIEFS' COMPLAINT ON FILE HEREIN AS AMENDED AND SUPPLEMENTED AND UPON THE COMPLAINT IN INTERVENTION OF THE CITY OF FRESNO ON FILE HEREIN AS AMENDED AND SUPPLEMENTED AND UPON THE COMPLAINT IN INTERVENTION OF TRANQUILLITY IRRIGATION DISTRICT ON FILE HEREIN AS AMENDED AND SUPPLEMENTED [2553]

To:

Robert H. Gerdes and William B. Kuder, Attorneys at Law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company;

Gilbert H. Jertberg, Attorney at Law, Security Bank Building, Fresno, California, Attorney for Pacific Gas & Electric Company;

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, attorney for Consolidated Irrigation District;

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts;

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Security First National Bank Building, Landsay, California, attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, Attorney for Saucelito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, Attorney for Stone Corral Irrigation District;

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Washington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America;

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California, attorneys for Chowchilla Water District, et al.;

David E. Peckinpah & Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities;

Harold Weise, Assistant United States Attorney, State Building, San Francisco, California. [2555]

Please Take Notice that on the annexed affidavit of Claude L. Rowe duly sworn to on the 6th day of December, 1954, on the complaint on file herein as amended and supplemented, on the complaint in intervention of the City of Fresno on file herein, as amended and supplemented, and on the complaint in intervention of Tranquillity Irrigation District, on file herein, as amended and supplemented, and on all other pleadings, papers and proceedings on file and had herein, an application will be made at the United States Courthouse in the City of Fresno

on Tuesday, the 14th day of December, 1954, before the Honorable Peirson M. Hall, Judge of the above entitled Court, at 10:00 A.M. of said day or as soon thereafter as counsel can be heard, for judgment against the defendant the United States of America as demanded in said complaint as amended and supplemented on file herein, for judgment against the defendant in intervention the United States of America as demanded in the complaint in intervention, as amended and supplemented of the City of Fresno on file herein, and for judgment against the defendant in intervention United States America as demanded in the complaint in intervention, as amended and supplemented of Tranquillity Irrigation District on file herein, and for such other and further judgments, orders and relief as to the above entitled Court may seem just and proper in the premises.

Dated this 6th day of December, 1954.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs.
/s/ CLAUDE L. ROWE,
/s/ C. M. OZIAS,
Attorneys for Complainant in Intervention, the City of Fresno.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District. [2556]

Points and Authorities
Rule 55 (b) F.R.C.P. [2557]

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF CLAUDE L. ROWE IN SUPPORT OF APPLICATION (MOTION) FOR DEFAULT JUDGMENT

(Against Defendants and Defendants in Intervention Clyde Spencer, individually and as Supervising Engineer, California Projects, United States Bureau of Reclamation, as Regional Director of the U. S. Bureau of Reclamation, as Director, Region 2, U. S. Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, U. S. Bureau of Reclamation, on Plaintiffs' Complaint On File Herein As Amended and Supplemented and Upon The Complaints in Intervention As Amended and Supplemented On File Herein of The City of Fresno and Tranquillity Irrigation District.) [2558]

State of California,
County of Fresno—ss.

Claude L. Rowe, being first duly sworn, deposes and says that he is attorney for the plaintiffs herein, attorney for Tranquillity Irrigation District, Complainant in Intervention, and one of the attorneys for the City of Fresno, Complainant in Intervention, that the defendants and defendants in intervention Clyde Spencer, individually and as Supervising Engineer, California Projects, United States

Bureau of Reclamation, as Regional Director of the United States Bureau of Reclamation, as Director, Region 2, United States Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, and as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, have, after the time allowed therefor by the Federal Rules of Civil Procedure, filed answers to the complaint on file herein as amended and supplemented, and the complaints in intervention of the City of Fresno and Tranquillity Irrigation District as amended and supplemented on file herein, and were not, nor are they now represented at the reopening of the trial of the above entitled action by counsel, which said trial was reopened on the 7th day of December, 1954 at the Federal Court House, Fresno, California before the Honorable Peirson M. Hall, Judge, at the hour of 10:00 A.M. of said day by order of the above entitled Court dated on or about the 18th day of November, 1954.

Dated this 7th day of December, 1954.

/s/ CLAUDE L. ROWE.

Subscribed and sworn to before me this 7th day of December, 1954.

[Seal] /s/ MARCIA C. MOTT,
Notary Public in and for said
County and State. [2560]

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

NOTICE OF APPLICATION (MOTION) FOR DEFAULT JUDGMENT AGAINST DEFENDANTS AND DEFENDANTS IN INTERVENTION

(Clyde Spencer, individually and as Supervising Engineer, California Project, United States Bureau of Reclamation, as Regional Director of the U. S. Bureau of Reclamation, as Director, Region 2, U. S. Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, U. S. Bureau of Reclamation, On Plaintiffs' Complaint On File Herein As Amended and Supplemented and Upon The Complaints in Intervention As Amended and Supplemented On File Herein of The City of Fresno and Tranquillity Irrigation District.) [2561]

To:

Robert H. Gerdes and William B. Kuder, Attorneys at Law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company;

Gilbert H. Jertberg, Attorney at Law, Security Bank Building, Fresno, California, Attorney for Pacific Gas & Electric Company;

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, attorney for Consolidated Irrigation District;

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts;

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, Attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, Attorney for Stone Corral Irrigation District;

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Wash-

ington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America;

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California, attorneys for Chowchilla Water District, et al.;

David E. Peckinpah & Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities;

Harold Weise, Assistant United States Attorney, State Building, San Francisco, California. [2563]

Please Take Notice that on the annexed affidavit

of Claude L. Rowe, duly sworn to on the 7th day of December, 1954 on the complaint on file herein as amended and supplemented, on the complaint in intervention of the City of Fresno on file herein, as amended and supplemented, and on the complaint in intervention of Tranquillity Irrigation District, on file herein, as amended and supplemented, and on all other pleadings, papers and proceedings on file and had herein, an application will be made at the United States Courthouse in the City of Fresno on Tuesday, the 14th day of December, 1954, before the Honorable Peirson M. Hall, Judge of the above entitled Court, at 10:00 A.M. of said day or as soon thereafter as counsel can be heard for judgment against the defendants Clyde Spencer individually, and as Supervising Engineer, California Projects, United States Bureau of Reclamation, as Regional Director of the United States Bureau of Reclamation, as Director, Region 2, United States Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, and as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation; Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, as demanded in said complaint as amended and supplemented on file herein, for judgment against the defendants in intervention Clyde Spencer individually, and as Supervising Engineer, California Projects, United States Bureau of Reclamation, and as Regional Director of the United States Bureau of

Reclamation, as Director, Region 2, United States Bureau of Reclamation; Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, and as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, United States Bureau of Reclamation, as demanded in the complaints in intervention, as amended and supplemented of the City of Fresno and Tranquillity Irrigation District, on file herein, and for such other and further judgments, orders and relief as to [2564] the above entitled Court may seem just and proper in the premises.

Dated this 7th day of December, 1954.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs.
/s/ CLAUDE L. ROWE,
/s/ C. M. OZIAS,
Attorney for Complainant in Intervention, the City of Fresno.

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District.

Points and Authorities

Rule 55 (b) F.R.C.P.

[Endorsed]: Filed December 7, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Fresno—ss.

Marcia C. Mott, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of 18 years of age and not a party to the above entitled action.

That on the 7th day of December, 1954, she deposited in the United States mails in the post office at Fresno, California in an envelope bearing the requisite postage in the above entitled action:

1. Application (Motion) for default judgment against defendants and defendants in intervention Clyde Spencer, individually and as Supervising Engineer, California Project, U. S. Bureau of Reclamation, as Regional Director of the U. S. Bureau of Reclamation, as Director, Region 2, U. S. Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, as Superintendent of Operations of the Central Valley Project, U. S. Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, U. S. Bureau of Reclamation.

2. Notice of Application (Motion) for Default Judgment against defendants and defendants in intervention Clyde Spencer, individually and as Supervising Engineer, California Project, United States Bureau of Reclamation, as Regional Director of the U. S. Bureau of Reclamation, as Director, Region 2, U. S. Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, as Superintendent of Operations of the Central Valley Project, U. S. Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, U. S. Bureau of Reclamation.

3. Affidavit of Claude L. Rowe in support of application (Motion) for default judgment against defendants and defendants in intervention, Clyde Spencer, individually and as Supervising Engineer, California Projects, U. S. Bureau of Reclamation, as Regional Director of the U. S. Bureau of Reclamation, as Director, Region 2, U. S. Bureau of Reclamation, Martin Blote, individually and as Watermaster, United States Bureau of Reclamation, as Superintendent of Operations of the Central Valley Project, United States Bureau of Reclamation, Edwin F. Sullivan, individually and as Operations Supervisor, Fresno Operations Office, U. S. Bureau of Reclamation, on plaintiffs' complaint on file herein as amended and supplemented,

and upon the complaints in intervention as amended and supplemented of the City of Fresno and Tranquillity Irrigation District.

4. Application (Motion) for default judgment against defendant and defendant in intervention, the United States of America.

5. Notice of Application for judgment against defendant United States of America on plaintiffs' complaint on file herein as amended and supplemented and upon the complaint in intervention of the City of Fresno on file herein as amended and supplemented, and upon the complaint in intervention of Tranquillity Irrigation District, on file herein, as amended and supplemented.

6. Affidavit of Claude L. Rowe in support of application on complaint herein as amended and supplemented and on the complaints in intervention as amended and supplemented of the City of Fresno and Tranquillity Irrigation District for default judgment against defendant and defendant in intervention, the United States of America.

7. Affidavit of Service by Mail.

addressed to each of the following:

To:

Robert H. Gerdes and Williams B. Kuder, Attorneys at Law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company;

Gilbert H. Jertberg, Attorney at Law, Security

Bank Building, Fresno, California, Attorney for Pacific Gas & Electric Company;

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, attorney for Consolidated Irrigation District;

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California. State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts;

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District Tulare Irrigation District and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, Attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North

Church Street, Visalia, California, Attorney for Stone Corral Irrigation District;

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Washington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America;

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California, attorneys for Chowchilla Water District, et al.;

David E. Peckinpah & Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney,

Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities;

Harold Weise, Assistant United States Attorney, State Building, San Francisco, California.

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ MARCIA C. MOTT.

Subscribed and sworn to before me this 7th day of December, 1954.

[Seal] CLAUDE L. ROWE,
Notary Public in and for said County & State.

[Endorsed]: Filed December 9, 1954.

[Title of District Court and Cause.]

ORDER SHORTENING TIME [2607]

Upon Reading the affidavit of Marcia Mott and good cause appearing therefor, It Is Hereby Ordered, Adjudged and Decreed that motion of plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District to strike the objections of the defendant and defendant in

intervention the United States of America to plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District's Requests for Admissions on file herein, from the files of the above entitled action, or in event said motion to strike is denied, to hear said objections of said defendant and defendant in intervention, the United States of America (noticed for hearing for December 14, 1954 at the hour of 10:00 A.M. of said day in the courtroom of the above entitled Court, Federal Building, Fresno, California), may be given by depositing said notice of hearing of plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District's motion to strike or in the alternative to hear the objections to Requests for Admissions of the defendant and defendant in intervention, the United States of America in the United States mail not later than December 9, 1954, and in the case of the defendant and defendant in intervention the United States of America, said notice shall be sent airmail special delivery to the attorneys for the defendant and defendant in intervention, the United States of America, not later than said 9th day of December, 1954.

Dated this 8th day of December, 1954.

/s/ PEIRSON M. HALL,
Judge, U. S. District Court.

[Endorsed]: Filed December 10, 1954.

[Title of District Court and Cause.]

NOTICE OF MOTION TO STRIKE OBJECTIONS OF DEFENDANT AND DEFENDANT IN INTERVENTION THE UNITED STATES OF AMERICA TO PLAINTIFFS AND COMPLAINANTS IN INTERVENTION THE CITY OF FRESNO AND TRANQUILLITY IRRIGATION DISTRICTS' REQUEST FOR ADMISSIONS BY SAID DEFENDANT AND DEFENDANT IN INTERVENTION THE UNITED STATES OF AMERICA [2594]

To:

Robert H. Gerdes and William B. Kruder, Attorneys at Law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company;

Gilbert H. Jertberg, Attorney at Law, Security Bank Building, Fresno, California, Attorney for Pacific Gas and Electric Company;

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, attorney for Consolidated Irrigation District;

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts;

Maddox & Abercrombie & Erling H. Kloster, At-

torneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, Attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, Attorney for Stone Corral Irrigation District;

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Washington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America;

Green, Green & Plumley, Attorneys at Law, 219

South D Street, Madera, California, attorneys for Chowchilla Water District, et al.;

David E. Peckinpah & Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and employees of the United States Bureau of Reclamation, individually and in their official capacities;

Harold Weise, Assistant United States Attorney, State Building, San Francisco, California; [2596] and to the defendant and defendant in intervention, the United States of America:

You and each of you will please take notice that the plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District will, on the 14th day of December, 1954 at the hour of 10:00 A.M. of said day, before the Honorable Peirson M. Hall, District Judge, in the Courtroom of the above entitled Court, Federal Building, Fresno, California move the above entitled Court for an order of the above entitled Court striking from the files of the above entitled Court the Ob-

jections of defendant and defendant in intervention the said United States of America, dated the 1st day of December, 1954, (and as also contained in said defendant and defendant in intervention the United States of America's "Suggestion in Connection with Response to Request for Admissions" dated December 2, 1954 on file herein) to the Request for Admissions of plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District by said defendant and defendant in intervention the United States of America, or in event said motion is denied, for an order or ruling of the above entitled Court upon the said objections of said defendant and defendant in intervention the said United States of America, hereinabove referred to, to the Request for Admissions of said plaintiffs and complainants in intervention the City of Fresno and Tranquillity Irrigation District by said defendant and defendant in intervention the United States of America.

Dated this 9th day of December, 1954.

/s/ CLAUDE L. ROWE,
Attorney for Plaintiffs,

/s/ CLAUDE L. ROWE,
/s/ C. M. OZIAS,
Attorney for Complainant in Intervention, the City of Fresno,

/s/ CLAUDE L. ROWE,
Attorney for Complainant in Intervention, Tranquillity Irrigation District. [2597]

[Endorsed]: Filed December 10, 1954.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Fresno—ss.

Marcia C. Mott, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Fresno County, California; that her business address is 910 Security Bank Building, Fresno 21, California; that she is over the age of 18 years of age, and not a party to the above entitled action.

That on the 14th day of December, 1954, she deposited in the United States mails in the post office at Fresno, California in an envelope bearing the requisite postage in the above entitled action:

1. Motion to Strike and in the Event the Same is Granted, Motion and Application for Default Judgment.
2. Notice of Motion to Strike and in the Event the Same is Granted, Motion and Application for Default Judgment.
3. Order Shortening Time.
4. Affidavit of Service by Mail.

addressed to each of the following: [2652]

To:

Robert H. Gerdes and William B. Kruder, Attorneys at Law, 245 Market Street, San Francisco 6, California, Attorneys for Pacific Gas & Electric Company;

Gilbert H. Jertberg, Attorney at Law, Security Bank Building, Fresno, California, Attorney for Pacific Gas and Electric Company;

Ronald Harris, Attorney at Law, T. W. Patterson Building, Fresno, California, attorney for Consolidated Irrigation District;

Edmund G. Brown, Attorney General of the State of California; and B. Abbott Goldberg, Deputy Attorney General of the State of California, State Building, San Francisco, California, attorney for the State of California and two of the attorneys for the following referred to Irrigation Districts, Water Districts and Municipal Utility Districts;

Maddox & Abercrombie & Erling H. Kloster, Attorneys at Law, Bank of America Building, Visalia, California, attorneys for Terra Bella Irrigation District, Porterville Irrigation District, Exeter Irrigation District, Delano-Earlimart Irrigation District, Lindsay-Strathmore Irrigation District, Ivanhoe Irrigation District, Orange Cove Irrigation District, Tulare Irrigation District and Stone Corral Irrigation District;

James R. McBride, Attorney at Law, Security First National Bank Building, Lindsay, California, Attorney for Lindsay-Strathmore Irrigation District, Lindmore and Ivanhoe Irrigation Districts;

Leroy McCormick, Attorney at Law, Bank of America Building, Visalia, California, attorney for Saucelito and Orange Cove Irrigation Districts;

John R. Locke, Attorney at Law, 127 North Church Street, Visalia, California, Attorney for Stone Corral Irrigation District;—

Herbert Brownell, Attorney General of the United States, Washington, D. C., J. Lee Rankin, Assistant Attorney General of the United States, Washington, D. C., William H. Veeder, Special Assistant to the Attorney General of the United States, Washington, D. C., attorneys for the United States of America;

Joseph F. McPherson, Special Assistant to the Attorney General of the United States, Federal Building, Los Angeles 12, California, attorney for defendant officials and employees of the Bureau of Reclamation, individually and in their official capacities and for the United States of America;

Green, Green & Plumley, Attorneys at Law, 219 South D Street, Madera, California, attorneys for Chowchilla Water District, et al.;

David E. Peckinpah & Harold M. Child, Attorneys at Law, 431 Brix Building, Fresno, California, attorneys for Madera Irrigation District, et al.;

J. O. Reavis, Attorney at Law, First National Bank Building, Delano, California, attorney for Southern San Joaquin Municipal Utility District, et al.;

Kenneth A. Kuney, Attorney at Law, Tulare, California, attorney for Lower Tule River Irrigation District;

Laughlin E. Waters, United States Attorney, Southern District of California, Federal Building, Los Angeles, California, attorney for the United States of America and defendant officials and em-

ployees of the United States Bureau of Reclamation, individually and in their official capacities;

Harold Weise, Assistant United States Attorney, State Building, San Francisco, California. [2653]

That there is a delivery service by United States mail from the above named post office to each of the above addresses.

/s/ MARCIA C. MOTT.

Subscribed and sworn to before me this 14th day of December, 1954.

[Seal] /s/ CLAUDE L. ROWE,
Notary Public in and for said County and State. [2654]

[Endorsed]: Filed December 16, 1954.

[Title of District Court and Cause.]

SUPPLEMENTAL MEMORANDUM AFTER HEARING MAY 22, 1956

On March 12, 1956, upon hearing and after notice to all counsel and parties, the Court fixed May 22, 1956, at Fresno, as the time and place for further hearings concerning a physical solution as indicated in the Opinion filed February 7, 1956. A hearing in the nature of pre-trial, under Rule 16, Federal Rules of Civil Procedure, was had on May 14, 1956, at Los Angeles, pursuant to an Order dated April 17, 1956, which, inter alia, provided:

"It Is Further Hereby Ordered and Directed that each of you shall, on or before the close of business on the 9th day of May, 1956, serve by mail, or personally, each of the other above named attorneys and officials of the United States Bureau of Reclamation, and file with the above entitled court, a written statement showing: (1) the persons or parties to the within action for whom you are appearing; (2) the names of the witnesses which you expect to call at the hearing now set for May 22, 1956; (3) an estimate of the length of time required for the production of evidence expected to be produced by you; and (4) such plans, modification, or amendment, or substitution of plans for the physical solution proposed by the plaintiffs, which you may have which shall show the number, type, and location of collapsible check dams and the engineering details therefor, and/or such other physical work as is, or may be, proposed or deemed necessary to accomplish the general plan of physical solution indicated by the Court in the Opinion filed February 7, 1956."

A copy of that Order, as well as each Order fixing the hearing for March 12, 1956, and for May 22, 1956, was mailed to all counsel of record, and to: Herbert Brownell, Jr., The Attorney General of the United States; J. Lee Rankin, Assistant Attorney General of the United States, Office of Legal Counsel; Wm. H. Veeder, Special Assistant to the Attorney General of the United States; Laughlin E. Waters, United States Attorney, Southern District of California, Los Angeles, California; as well as to the following defendant officials of the United

States; Clyde Spencer, Supervising Engineer, California Projects, U. S. Bureau of Reclamation, Regional Director of the U. S. Bureau of Reclamation, Region 2, U. S. Bureau of Reclamation, c/o U. S. Bureau of Reclamation, Sacramento, California; Martin Blote, Watermaster, U. S. Bureau of Reclamation, and Superintendent of Operations of the Central Valley Project, U. S. Bureau of Reclamation, c/o U. S. Bureau of Reclamation, Sacramento, California; and Edwin F. Sullivan, Operations Supervisor, U. S. Bureau of Reclamation, c/o U. S. Bureau of Reclamation, Fresno, California.

Neither the Attorney General of the United States, nor any Assistant or Special Assistant Attorney General of the United States, nor the United States Attorney, nor any Assistant United States Attorney, nor any of said defendant officials filed any statement in response to, or in compliance with, said Order, or any statement at all on behalf, or in the name, of the United States or said defendant United States officials or any of them; nor did they or any of them or anyone else appear at any of the hearings on March 12, 1956, May 14, 1956, or May 22, 1956, for or on behalf of, or in the name of, the United States, or said defendant United States officials, or any of them. [3261]

Most of the defendant Districts filed statements in response to said Order of April 17, 1956, as did the Intervenor, State of California, and the officials of the State of California who are defendants in the ancillary proceedings. All such statements in-

dicated that no evidence would be offered at the hearing on May 22, 1956. The defendant Districts in their statements generally suggested that the number of dams to be constructed be held to a minimum and be constructed in the most economical manner.

The Plaintiffs, and the Plaintiff in Intervention City of Fresno, and the Plaintiff in Intervention Tranquillity Irrigation District filed a written statement in response to said Order indicating that additional testimony would be produced.

At the hearing on May 22, 1956, no evidence was offered by anyone except the plaintiffs. Their counsel put on evidence from which it appears that the water levels in the wells in the easterly end of the alluvial cone of the San Joaquin River and within the "Lee" lines had dropped as much as 100 feet since 1952 after the impoundment and diversion of water into both the Madera and Friant-Kern canals, and that some wells, after deepening to bedrock, would only produce a portion of the quantity of water in gallons per minute which they had produced before. The evidence also showed that since 1952, crops and fruit trees had to be, and were, abandoned in that area because of the inability to produce water from wells which had theretofore produced sufficient water for crop and domestic uses, and that unless the water tables were restored, or a substitute water supply found, continuing and progressive abandonment of crops and orchards would result from lack of water. [3262]

The defendant Clyde E. Spencer was called to the witness stand by the plaintiffs, but his testimony was limited principally to confirming his duties and those of defendants Martin Blote and Edwin F. Sullivan to be as heretofore indicated by the Court in its Opinion filed February 7, 1956.

The defendant Edwin F. Sullivan was called to the witness stand by plaintiffs, and produced general statistical data concerning the flows of the San Joaquin and Kings rivers.

Plaintiffs also called to the witness stand Mr. Leland Hill, the principal expert of the defendants at the main trial of the case, who stated on the witness stand that on the basis of the conclusions set forth in the Court's Opinion filed February 7, 1956, he had no suggestions for changing the plaintiffs' plan of physical solution except that he did not, under any circumstances, feel that Dams No. 13 and No. 14 were necessary or useful, and that Dam No. 12 should be moved downstream about one-half river-mile so that, in addition to performing its functions as part of plaintiffs' plan of physical solution, it could also act as a weir to divert water into the Gravelly Ford canal, if, as and when the United States was required to do so.

The testimony of Mr. Hill on the main trial of the case suggested that if the government were to build the collapsible dams of the type proposed by the plaintiffs, there would likely be some differences in design and construction, but when asked on the May 22, 1956, hearings if [3263] he had any sug-

gestions in that respect, he said that he had none.(F.N.*)

In the Opinion of February 7, 1956, and by the Order of April 17, 1956, the Court invited all of the defendants and those who might have any objection to plaintiffs' plan of physical solution to suggest modifications, but no suggested modifications, either as to number, type, or location of any dams, were proposed by any of the parties, except the testimony of Mr. Hill as above referred to.

In the Opinion filed February 7, 1956, the Court, while indicating general approval of plaintiffs' plan of physical solution, suggested that all of the fourteen dams, as finally proposed in plaintiffs' amended plan of physical solution, should not be required at the present time as a conditional physical solution, and also indicated that, pending observation of the hydrological changes resulting in the area involved as a consequence of the alteration of the natural regimen of the river by the construction of Friant

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* FN—The Court, desiring to again view the proposed dam sites, requested that plaintiffs' principal expert, Mr. Charles H. Lee, and Mr. Leland Hill, the principal expert for the defendants, accompany the Court to the area for the purpose of aiding the Court in finding the precise location on the ground of the various dam sites, and again inspecting and viewing the sites of the dams on the ground. All counsel consented, and the inspection trip down the river was made by the Court with said engineers on May 24, 1956. No additional evidence was taken on the trip. All dam sites except Nos. 13 and 14 of plaintiffs' plan were again inspected and viewed by the Court.

Dam and the diversion of water, less than twelve dams, as originally proposed in plaintiffs' plan of physical solution, should be required at this time as a conditional physical solution "if, in the meanwhile, the rights of plaintiffs and their class can be protected." [3264]

From a further consideration of all of the evidence in the case, the Court concludes that the rights of all parties will be best protected and served, reasonable and beneficial use by reasonable methods of diversion and use will be accomplished, and the Constitution and Laws, both of California and the United States, will be complied with by, and that the present minimum requirements for the protection of the rights of plaintiffs and their class require, a decree of injunction prohibiting the impoundment and diversion of waters of the San Joaquin River at Friant, except upon condition that the defendants, at their cost, shall provide a physical solution by the construction of a minimum of ten dams of the height, nature, and type of construction as proposed by the plaintiffs, and located as follows, viz: Dames Nos. 1, 2, 3, 5, 7, 9, 10 and 11 to be at the sites proposed by plaintiffs; Dam No. 4 to be moved approximately one river-miles downstream from the site proposed by the plaintiffs; Dam No. 12 to be moved downstream to a point approximately one-half of a river-mile below the take-off of Gravelly Ford canal, and Dams No. 4 and No. 12 each raised to sufficient height that they will provide the same upstream impounding as if built at the site proposed by plaintiffs; the physical

solution to further provide for the release of sufficient water from Friant as will permit a continuous flow of five cubic feet per second over the last downstream dam, and also for flushing releases as indicated in plaintiffs' plan of physical solution.

Dams Nos. 6 and 8, as proposed by the plaintiffs, are not now required for the reason that rock and gravel operations in the river bed, in the vicinity of each one, now result in the ponding of water. The ponding is not to the [3265] same extent as would occur if dams Nos. 6 and 8 were built, but is sufficient to warrant the Court, in the exercise of caution, to refrain from ordering their construction at this time. If experience develops that the ponding resulting from the rock and gravel operations, together with the other requirements of the physical solution ordered, are not sufficient to satisfy the physical requirements for water for river pumpers or percolation, that will be sufficient time for the Court to give further consideration to their construction.

Dams Nos. 13 and 14 were proposed by plaintiffs to be downstream from Dam No. 12 at Gravelly Ford. The nature of the aquifers changes in the vicinity between Skaggs bridge and Gravelly Ford so that below the latter point on the river, from the present evidence in the case, the water percolating as a result of Dams Nos. 13 and 14 would not reach the aquifers in any substantial amount so as to supply the wells in that area. Whatever water would reach such wells as a result of Dams Nos. 13 and 14, would be more than offset by evap-

oration losses because of the flat nature of the banks and the shallowness of the water back of the dams, so that it would be an unreasonable method of diversion and use to presently require the construction of Dams Nos. 13 and 14 as part of the physical solution.

It is to be remembered that, under California law, there will be an open decree in this case, which will permit the equity powers of the court to be later invoked, if warranted under the facts.

The operation of the physical solution may require the services of someone in the nature of a Watermaster, such [3266] as was approved by the Supreme Court in Montezuma Canal Co. v. Smithville Canal Company, (1910) 218 U.S. 71. But such designation need not be made now as the only variations from year to year in the operation of the plan will be in the date and amounts of scouring releases, and the time of raising the dam gates in the spring for ponding purposes, and lowering them in the fall or winter for flood release purposes. This can be more economically done, and with little inconvenience, if, after the dams are completed, a hearing is held, on motion of any party, and an order made on such matters in the spring of each year before the irrigation season begins. By that time, the record of releases from Friant for flood or other purposes for the past winter will be available, to aid in determining the time and quantity of scouring releases, if any. Information concerning estimated water supply for the ensuing season will

also be available, as will the crop plantings and pattern. Such hearing would probably take no more than one day, or even less. If such procedure should, in the future, prove too cumbersome, it will be time enough then to give consideration to the appointment of a Watermaster. Or it is possible that time may demonstrate the need for the formation of a Water District in connection with the operation of the physical solution.

The ponding created as a result of the dams will occur in the bed of the river, and will not raise the water above the level which would take place at a flow of 2,000 cubic feet per second. None of the dams so ordered will raise the water to such height as would cause any flooding or water logging of any lands whatsoever.

This plan will require a minimum of water, and will stabilize and define, as near as can be done at the present time, the rights of all the parties. [3267]

Counsel for the plaintiffs, at the hearing, urged that the radical changes in underground water in the easterly end of the alluvial cone, as above indicated, warranted the Court in requiring as a part of a physical solution the furnishing of a given quantity of water from the Friant-Kern canal, measured in acre-feet, directly to a small area of specifically described lands in the Garfield area. The evidence shows radical changes and a lowering in underground water throughout the San Joaquin cone resulting from the impoundment and diversion of water at Friant, and causing a great impinge-

ment upon prior vested rights. But the Court is of the view that, as a matter of law in this class action, an order for a physical solution should not be made in terms of delivery of a measured quantity of water to specifically described lands within the alluvial cone unless it is incidental to, and a consequence of, the satisfaction of the common rights to water from a common source, of all of the members of the class. The last above mentioned claim of the lands in the Garfield area is not of such incidental and consequential nature.

In addition to the authorities cited in the Opinion filed February 7, 1956, reference is made to the following cases to support the power of this Court to issue judgment in accordance with that Opinion and this Memorandum, to-wit:

Magruder v. Belle Forche Water Users' Association, 219 Fed. 72, at 81;

Nampa & Meridian Irr. Dist. v. Bond, 268 U. S. 50, 45 S. Ct. 383;

Payette, etc. v. Cole, (D.C. Ida. 1919) 263 Fed. 734; [3268] U. S. v. Coachella Valley, etc., 111 F. Supp. 172.

Dated: Los Angeles, California, this 11th day of July, 1956.

/s/ PEIRSON M. HALL,
United States District Judge.

[Endorsed]: Filed July 11, 1956.

[Title of District Court and Cause.]

STATEMENT BY J. LEE RANKIN SOLICITOR GENERAL

Congress may not be ordered to provide funds to change the long-established plans for the Central Valley Project. Yet that is the relief for which plaintiffs pray and which this Honorable Court declares it is disposed to grant. To enter a mandatory injunction requiring the construction of collapsible dams on the San Joaquin River as this Court proposes will constitute an attempted invasion by the Judiciary of the powers of both the Legislative and Executive Branches of our Government.

Due process of law requires that those who desire to be heard shall have their day in court. Plaintiffs nevertheless purport to represent in excess of a thousand landowners who are not before the Court, indeed it is doubtful if many of them are aware of this litigation. Contrary to the Constitutional Guarantees of due process, this Court has declared that the decree prayed for by the few plaintiffs who appeared will be binding upon the great class they allegedly represent.

Default by the United States of America which has neither appeared nor pleaded in this proceeding, was a course adopted when after two hundred days of trial this Court ordered it joined as a party. Having suggested to this Court, among other things, it lacked jurisdiction to enter orders purporting to control Congress and the Executive Branch of the Government; that basic Constitu-

tional Guarantees to numerous landowners were being violated; that the National Government is immune from suits of this character, it chose through default to have resolved the issues contained in applicable pleadings rather than be immersed in a record of the character built up through the protracted proceedings.

It is on the background of these fundamental precepts of the law that the accompanying objections on behalf of the defendant subordinate officials only, and not the United States of America, to the findings of fact, conclusions of law and judgment proposed by the plaintiffs and to the opinion and supplemental memorandum of this Court are tendered.

Dated: November 16, 1956.

/s/ J. LEE RANKIN,
Solicitor General. [3284]

[Title of District Court and Cause.]

OBJECTIONS BY DEFENDANTS

(Clyde H. Spencer, Martin H. Blote, Edwin V. Sullivan Only, to the Findings of Fact and Conclusions of Law Contained In This Court's Opinion and Supplemental Memorandum[1] In the Subject Case and to Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Judgment)

Come now Clyde H. Spencer, Martin H. Blote,

[1] Rank, et al., v. Krug, et al., in the United States District Court for the Southern District of California, Northern Division, 1956, 142 F. Supp. 1.

Edwin F. Sullivan, Defendants, Only and Not the United States of America Which Has Neither Appeared Nor Pleaded In This Case and object to the findings of fact and conclusions of law in the opinion dated February 7, 1956, supplemental memorandum of July 11, 1956, and to the findings [3287] of fact, conclusions of law and judgment proposed by the plaintiffs in this cause, as being contrary to both the evidence introduced in the case and to the applicable principles of law.

Preliminary Statement

Plain, serious—indeed it is respectfully submitted—reversible errors appear throughout the opinion and its supplement. "Clearly erroneous" findings are set forth in the opinion; have been proposed by plaintiffs. Similarly erroneous conclusions of law are expressed in those documents.

Antecedent, however, to the individual specifications of error of law and fact, it is essential here to emphasize:

There are 161 pages in the reported opinion and its supplement. Interspersed throughout them are statements of fact relating to the complex physical phenomena to which they are directed. Respecting those facts the court declares: "All of the statements of fact contained in this Opinion are found by the Court to be true from a preponderance of the evidence * * *."[2] That opinion and supplement

[2] Rank v. Krug, 142 Fd. Supp. 1, 42 (U.S.D.C. S.D. Cal., N.D. 1956).

are "annexed and made a part of" plaintiffs' proposed findings. Noteworthy in that regard is this caveat set forth in those proposals: "All findings of fact stated therein [the opinion and supplement] are hereby found to be findings of fact of these said findings unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific findings shall be deemed the finding of this court."[3] Objections must, therefore, be presented in the light of the last quoted elusive guide. True nature of the problem confronting the objectors becomes apparent when consideration is directed to the vague, inexact, undocumented and frequently confused admixture of fact and law of which the opinion, its supplement and the proposals are comprised. [3288]

Specific Objections

A. Findings That 313,640 Acres Within The "Lee Line" "Have Been Highly Cultivated With Ample Water Supply," "Clearly Erroneous"

I.

1. In the opinion[4] it is stated:

"The lands of the class of landowners represented

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[3] Proposed findings of fact, page 1, lines 20 through 27.

[4] When mention is made of the "opinion" it includes the "opinion, and the supplemental memorandum of July 11, 1956," all as reported in 142 F. Supp. 1 et seq.

by the plaintiffs comprise approximately [313,640] [5] acres which for many years have been highly cultivated with ample water supply." [6]

"Clearly erroneous" is the only correct appraisal which may be reached respecting that statement quoted from the opinion. Prime example of that "clearly erroneous" finding is evident when consideration is given to the vast acreages within the area in question devoted to municipal uses which are not "highly cultivated with ample water supply." Obviously the hundreds of acres within the City of Fresno and its environs are not "highly cultivated." They are devoted to the great variety of land uses attendant upon a modern metropolitan center.

Consideration of the maps of the area within the embrace of the so-called "Lee Line" likewise will reveal that other large areas are similarly used for municipal and military purposes. They include Fresno, which has been mentioned, Herndon, Biola, Highway City, Camp Pinedale, Pinedale and others.

2. In addition to those lands presently occupied by business buildings and houses are the sites of the extensive industrial development in the general area of these cities and towns. They are not, of

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[5] Please refer to Exhibit 3, page 4, of proposed findings of fact, conclusions of law and judgment. The findings of fact stated therein (the opinion and supplemental memorandum) are hereby found to be findings of fact of these said findings unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific finding shall be deemed the finding of this court.

[6] Rank v. Krug, 142 F. Supp. 1, 37.

course, "highly cultivated with ample water supply." [3289]

3. Traversing the areas are the Southern Pacific and the Atchison Topeka and Santa Fe Railroads. Similarly the "Lee Line" area is also traversed by a net work of surfaced highways, with numerous farm and rural roads. In the light of the indisputable evidence that the transportation system serving this immense agricultural, industrial and commercial area occupies innumerable acres, the conclusion that the lands thus used or occupied are "highly cultivated with ample water supply" is manifestly and patently in error.

4. Canals, laterals and other structures deliver Kings River water to a large percentage of the 313,640 acres within the "Lee Line." That lands across which have been constructed those canals and laterals are not "highly cultivated with ample water supply" is, of course, manifest.

5. Thousand of acres of land within the "Lee Line" comprise the bed and banks of the San Joaquin River—innumerable acres are within the several channels of that stream which extend for miles within the area involved. No exposition of facts is required to prove that the bed and channels of the San Joaquin River are not "highly cultivated with ample water supply." The record thus refutes the finding in question.

6. Swamp and phreatophyte-infested lands are included within the "Lee Line". They are not now and have not been "highly cultivated."

These are but samples, patent from the record,

that there are literally thousands of acres within the 313,640 acres bound by the so-called "Lee Line" which are not "highly cultivated with ample water supply."

In Summary:

There is no evidence to support the statement in the opinion that 313,640 acres of land within the "Lee Line" "have been highly cultivated with ample water supply." Rather the record discloses that thousands of acres of land within the "Lee Line" are not cultivated. They are either devoted to non-agricultural uses or are not irrigable. Simply stated, there is no basis for the above quoted excerpt and the record is devoid of evidence which could be construed to support it. Purest conjecture is entailed in any attempt to arrive at a relevant figure respecting acreage within the "Lee Line" whether it be 313,640 acres or any other figure.

II.

Grave Errors of Fact and Law Casting Doubt Upon The Integrity of The Officials of The Department of The Interior Pervade The Opinion

Categorical denial is directed to this statement: "* * * after the passage of the Acts of Congress authorizing the construction of Friant Dam * * * the plaintiffs and the members of their class were assured by repeated public statements made by the officials of the Department of the Interior, not only to the public generally, but in all reports to Congress, that all of the land lying between Friant Dam and Mendota, * * * would continue to receive the

supply of water they had previously received, and that in fact their supply of water would be increased and equated throughout the year and thus the use thereof increased * * *."[7]

Congress approved a plan for the Central Valley Project and appropriated large sums to effectuate it. That plan did not contemplate providing water for the 313,640 acres of lands within the "Lee Line". As a consequence no official in the Executive branch of the Government was empowered to assure the landowners in the manner set forth in the above-quoted excerpt from the opinion. Had assurances of the nature mentioned been given—which is denied— they would have been ultra vires and without force and effect.

Important is this fact: Congress approved as part of the plan for the Central Valley Project payment to owners of rights to the use of water in the San Joaquin River which were invaded by the construction and operation of Friant Dam. Included in that phase of the plan were lands appearing on Exhibit 1 of the proposed findings which were assumed to be riparian. Beyond the narrow limits of that reach of the river between Friant Dam and Gravelly Ford no assurances to landowners were, or, for the reason expressed, could have been made.

Congress authorized payment to the landowners with rights in the narrow strip appearing on Exhibit 1, all as stated above, and to many [3291] payments were made for the value of their rights which

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[7] Rank v. Krug, 142 F. Supp. 1, 48.

were taken. Beyond that very limited area delineated on Exhibit 1 of the proposed findings no assurances were made. For, as emphasized above, Congress did not authorize any official to make them. Consequently the finding in the opinion that "the officials of the Department of the Interior" assured the landowners within the "Lee Line", subject to the mentioned exception, is greviously in error and should be corrected.

III.

Congress Approved and The Secretary of The Interior Effectuated The Central Valley Project Plan Without Assuring Water to 313,640 Acres of Lee-Line Land For Fundamental Reasons ignored By The Court and The Findings As Proposed

i. Kings River Water Irrigates Many Thousands of Acres of Land Within "Lee Line."

Kings River water irrigates thousands of acres of land within the "Lee Line". That river has historically been the source of water for much of the land in question. Indeed canals carrying Kings River water actually border upon the banks of the San Joaquin River. California when it planned the Central Valley Project; Congress when it approved and adopted that plan; the Secretary of the Interior who carried it out, were well aware that Kings River water served a vast area within the "Lee Line." Under those circumstances there was no basis for including that area, except as above

noted, within the plan of the Central Valley Project. They were for that reason excluded.

ii. Thousands of Acres of Land Not Entitled to Water Because of Miller & Lux Reservations are Within the "Lee Line".

Additional thousands of acres of land within the "Lee Line" are subject to Miller & Lux reservations which effectively stripped those lands of appurtenant rights to the use of water. Pertinent in that connection are the proposed findings which acknowledge the Miller & Lux reservations and that the United States of America succeeded to the San Joaquin River rights to which they pertain.[8] [3292]

Certain it is that the lands in question, though within the "Lee Line", are not entitled to any assurances, nor were the owners given assurances, that they would receive a supply of water.

iii. Thousands of Acres of Lands Within the "Lee Line" Have no Rights to the Use of Water by Reason of Conveyances to the United States of America.

Congress provided funds and the Secretary of the Interior carried out a program to pay all users whose rights were found to be invaded by the construction and operation of Friant Dam and its appurtenances. Included in that program are thousands of acres of land within the "Lee Line." Reference in that connection is made to the proposed findings.[9]

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[8] Proposed Finding 18, page 29 et seq.

[9] Proposed finding 18, page 38.

In Summary:

a. Kings River water irrigates thousands of acres of land within the "Lee Line."

b. Additional thousands of acres of land within the "Lee Line" are subject to Miller & Lux reservations stripping them of rights in the San Joaquin River.

c. Title to rights to the use of water originally appurtenant to lands within the "Lee Line" have been acquired by the United States of America.

Conclusion Respecting 313,640 Acres of "Lee-Line" Land:

Unknown thousands of acres of "Lee-Line" land are not "highly cultivated with ample water supply" as the opinion declares; rather they are devoted to non-agricultural use needing no water;

Unknown thousands of acres of "Lee-Line" land are now and have been historically irrigated from the Kings River;

Unknown thousands of acres of "Lee-Line" land have been stripped of any rights to the use of water from the San Joaquin River; accordingly

Objection is made to each finding of fact in the opinion and each finding which has been proposed as being wholly speculative and being based upon purest [3293] conjecture. No one knows and the record does not disclose the lands, if any, which are actually before the court other than the very limited acreage owned by a few plaintiffs who purport to represent and would bind thousands of landowners.

B. Record Does Not Support Specific or General Findings of Opinion or Those Which Have Been Proposed Respecting Rights to The Use of Water or The Duty of It

I.

Findings Fail to Disclose Total Irrigated or Irrigable Acreage of Lands Allegedly Owned By Plaintiffs Named In Paragraphs 1-16

Proposed findings 1 through 16 declare that the owners mentioned in them own riparian, prescriptive, appropriative or overlying rights. Conjecture of the nature alluded to in the preceding phases of these objections pervades these specific findings. For example, there is neither mention made respecting irrigated or irrigable acreage nor a basis for their ascertainment. It is specifically denied that all the lands described in proposed findings 1-16 are irrigable, much less irrigated. Manifest from the record is the fact that a great percentage of the acreage is comprised of the bed and banks of the San Joaquin River. "Clearly erroneous" is the only proper description of the proposed findings 1-16.

II.

Court's Opinion, Proposed Findings, Are Not Supported by Record In Declaration That Lands Have Appurtenant Riparian, Appropriative, Prescriptive or Overlying Rights

"From the facts * * * it is clear * * * that:

"The plaintiffs and members of their class * * * have vested rights, riparian, overlying, appropria-

tive and/or prescriptive to the full natural flow of the San Joaquin River * * *."[10]

That statement from the opinion is but an example of those with which it is replete. There is no basis for them. Absent proof of the title to the rights for the 313,640 acres of "Lee-Line" land there is no [3294] predicate for the mixed statement of law and fact.

Neither is there proof of irrigated acreage within the "Lee Line" nor is there basis in the record for determining it. Any conclusion respecting the character of the rights, if any, without proof of title in irrigable acreage places the finding in the realm of speculation to which this objection is directed.

Similar objections are directed to proposed finding 19.[11] There it is declared that all lands within Exhibit 2 are riparian. In proposed finding 21 "all" lands within the "Lee Line" except as noted, are declared to have overlying rights. Those statements are unsupported by the record—there is no proof of the facts from which would emanate those legal conclusions. Here let this fact be emphasized:

It is a fundamental tenet of the law that a claimant must succeed on the strength of his own title and not on the weakness of that of defendants. Failure thus to prove ownership of rights to the use of water which includes not only the physical

[10] Rank v. Krug, 142 F. Supp. 1, 115.
[11] Proposed finding 19, page 41.

phenomena attendant upon it but likewise the title, calls for objection on the ground that the statements in question are conjectural. It is not a matter which may be presumed; it must be proved.

The objections here set forth respecting proposed findings 19 and 21 apply equally to the findings respecting riparian lands contained in those numbered 1 through 16.

Pertinent in regard to the objections set forth above is this statement in proposed finding 22: "The use of water pumped from lands within the boundaries of Exhibit 3 (The Lee Line) on lands which do not adjoin the parcels of land from which the said underground percolating waters are pumped, is an appropriative use and not an overlying use of the said underground percolating waters underlying the lands within the boundaries of Exhibit 3 (The Lee Line)."[12] [3295]

The proposed finding just quoted discloses the wholly speculative nature of the alleged rights within the 313,640 acres of "Lee Line" lands. By reason of that fact the finding, as all others respecting rights to the use of water, are without foundation in regard either to the physical features of the land—irrigated, irrigable, river bottom, or swamp—or to the title of the lands. Proof, not speculation, is a prime requisite when findings of fact are being formulated or matters of law concluded in regard to rights to the use of water and their nature.

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[12] Proposed finding 22, page 44.

III.

Findings As Proposed In Regard to Duty of Water Are Vague, Uncertain and Wholly Speculative

There appears to be no finding proposed in regard to the duty of water for riparian land in findings 1 through 16. As to the lands with allegedly prescriptive and appropriative rights it is variously declared to be up to 1,400 gallons per minute;[13] 1,000 gallons per minutes;[14] 1,025 gallons per minute.[15] Those alleged rights to divert water are without limitation. They are not related to any acreage but accorded to the particular plaintiffs actually named. Thus the 160 acres of the Folsom property allegedly having "appropriative and prescriptive rights" has an annual water duty in excess of 14 acre-feet for each acre. It is denied that the lands in question are entitled to that quantity of water; it is denied that the record would support it.

Similar objections are made to the alleged duty of water for all other parcels alluded to in proposed findings 1 through 16.

Equally without support are the general findings respecting duty of water. To declare duties of water without regard to the irrigable character of the 313,640 acres of "Lee Line" land is to enter into the realm of purest speculation. [3296]

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[13] Proposed findings, page 3.
[14] Proposed findings, page 8.
[15] Proposed findings, page 11.

In Summary:

As there is no proof of ownership of the title to lands other than possibly those described in proposed findings 1 through 16, it is accordingly impossible to declare as was attempted, the lands described in Exhibit 2 of the proposed findings as being riparian;

As there is no proof of ownership respecting the remainder of the 313,640 acres of "Lee-Line" lands; the irrigated or irrigable acreage; the diversion and application of water to beneficial use; the period of use and the other factors upon which findings could be made respecting the acquisition of rights to the use of water by prescription or appropriation within the 313,640 acres embraced by the "Lee Line"; the findings in regard to those lands are without foundation and thus are entirely objectionable.

Proposed findings respecting duty of water are confused, conflicting and contrary to fact, and are equally objectionable.

C. The Record Does Not Support The Finding That The San Joaquin River Is The Source of Water Supply For 313,640 Acres of "Lee-Line" Land

Approximately twelve miles from the San Joaquin River are situate thousands of acres of "Lee-Line" lands in Township Fifteen (15) South, Range Seventeen (17) East, Mount Diablo Base and Meridian. It is denied that the record will support a finding that those lands have appurtenant rights

to the use of water from that stream. It is likewise denied that additional thousands of acres, similarly far removed from the San Joaquin River have appurtenant rights in it. There is no basis to conclude that the owners of those lands claim, or have basis for claiming, rights to the use of water from that stream.

Let this fact likewise be emphasized:

Assuming the 313,640 acres of "Lee-Line" land had appurtenant rights to the San Joaquin River—which is denied— [3297] the facts before this Court prove unequivocally that many thousands of them rely on the Kings River and other sources for their water. They have thus substituted those other sources for whatever their claims may have been from the stream in litigation, and under fundamental tenets of the law may not successfully assert claims in the latter stream.

D. Proposed Collapsible Dams Are Not Practicable For Physical Solution Assuming This Court Had Jurisdiction to Order Their Construction —Which It Does Not

It is denied that collapsible dams situated twelve miles from the lands in Township Fifteen (15) South, Range Seventeen (17) East, Mount Diablo Base and Meridian, could provide those lands with San Joaquin River water. That statement is reiterated in regard to all of the "Lee-Line" land.

Equally important is this fact: There is no means of determining

(1) The quantity of water which must be provided to the 313,640 acres of "Lee-Line" land by the collapsible dams;

(2) That the land entitled to receive the water will be supplied as distinguished from the untold thousands of acres within that category which are not entitled to the benefits of the collapsible dams which comprise the physical solution.

Thus if that solution were practicable, it could be defeated by unauthorized diversions.

E. The Record Does Not Support The Finding That The Lowering of The Ground Water Table For "Lee-Line" Land Is Attributable to Friant Dam and Appurtenances

The evidence in the record will not support the finding that the lowering of the water table within the "Lee Line" is attributable to the construction and operation of Friant Dam and its appurtenances, if that lowering actually transpired. Rather, that phenomenon, if it in fact has [3298] occurred, stems from the pumping by the water users within the "Lee Line"; by protracted drought.

F. Objections Made Above Are Equally Applicable to Proposed Findings Relative to The City of Fresno, Tranquillity Irrigation District and The State of California

All of the objections set forth above are equally applicable to the City of Fresno, The Tranquillity Irrigation District, and the State of California.

Proposed findings with specific reference to those last named parties are objected to as being contrary to the evidence.

Objections to Proposed Conclusions of Law and Proposed Judgment

The defendant subordinate officials are acting within the powers conferred upon them by the Congress and the Secretary of the Interior. They should accordingly be dismissed. It is clear beyond question moreover that the decree proposed against the defendant officials would be wholly inoperative and ineffective as it would expend itself upon the property and administration of the United States of America, over which this Court is without jurisdiction for the reasons expressed in the Statement of the Solicitor General. Authorities fully supporting these propositions of law were before this Court when it entered its opinion and supplemental memorandum, were considered by it and denied.

Due process of the law is violated and thousands of landowners are denied the right to be heard by reason of this purported class action. Clearly where, as here, all water users are in competition one against another, and with the plaintiffs allegedly acting for them, the elements essential to a representative action are wholly lacking. Those thousands of owners are of course indispensable parties and their absence deprives this Court of jurisdiction. Again this matter has been fully presented with eminent authority but, like all other objections to jurisdiction

and legal propositions, have been overruled by this Court.

It is denied that this Court has jurisdiction to enter a mandatory injunction of the nature proposed. It is likewise denied, assuming this Court [3299] had jurisdiction to order the physical solution, which is denied, that the facts warrant relief of that nature or that the solution is practicable from the engineering standpoint. Equally manifest is the fact that defendant subordinate officials make no claims to rights in the San Joaquin River. There is thus a complete failure to state or prove a case against them for declaratory relief.

As neither the facts nor the law support the prayer for relief the judgment in its entirety is objectionable.

Dated: November 16, 1956.

/s/ J. LEE RANKIN,
Solicitor General.

/s/ DAVID R. WARNER,
Attorney, Department of Justice.

/s/ WILLIAM H. VEEDER,
Attorney, Department of Justice. [3300]

[Endorsed]: Filed November 19, 1956.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action having been tried by the court without a jury, the court hereby makes its findings of fact and conclusions of law:

Findings of Fact

All of the findings of fact herein contained are found by the court to be true from a preponderance of all of the evidence in the whole case, after carefully weighing it and giving due consideration to all the factors required by the trier of facts to be taken into consideration in making a decision on the facts.

Any statements and conclusions of law, even though stated in these findings of fact, are nevertheless hereby found to be conclusions of law.

Any finding of fact stated in the conclusions of law are nevertheless hereby found to be a finding of fact, even though stated in the conclusions of law.

The Opinion of the above entitled court heretofore filed in the above entitled action and dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956, are hereby expressly annexed and made a part of these findings. All findings of fact stated therein are hereby found to be findings

of fact of these said findings unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific finding shall be deemed the finding of this court. Said Opinion and Supplemental Memorandum After Hearing immediately precede Exhibit 1 of these findings.

The above foregoing incorporation and statements apply to all findings of fact of Complaints in Intervention.

Finding 1. The court finds that Duane M. Folsom and E. Florence Folsom and Bertha Folsom, at the time of the filing [3307] of the above entitled action were the owners in fee and entitled to the possession of those certain lands located in the County of Fresno, State of California, and more particularly described as follows:

Government Lots 4, 5, 6 and 7, and the S½ of the NE¼ of Section 10, and the NW¼ of Section 11, all in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Towpship Plats, in the County of Fresno, State of California; and all lands contiguous thereto to the center of the San Joaquin River.

In this regard the court finds that Bertha Folsom, during the course of the trial of the above entitled action, did transfer her interest in the above described real property to Duane M. Folsom and by order of the above entitled court dated the 17th day of September, 1954, said Bertha Folsom was dropped as a party plaintiff in the above entitled action, and that thereafter Duane M. Folson and

E. Florence Folsom were, and now are, the owners of said above described lands and entitled to the possession of the same.

The court finds that the above described lands, except that portion of said lands described in Exception 1 of this finding, at the time of the filing of the above entitled action and at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now do, abut and border upon said San Joaquin River and are and were at the time of the filing of the above entitled action and at all times mentioned in plaintiffs' complaint, as amended and supplemented, riparian to the San Joaquin River, and that the owners of said lands, excluding said property described in Exception 1 hereof, are entitled to take, pump and divert and use waters of said San Joaquin River for present and future beneficial uses on said above described lands, as reasonable methods of [3308] diversion and beneficial uses of said water are hereinafter and in these findings described and defined.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this finding, did not abut nor border upon said San Joaquin River at the time of the filing of plaintiffs' complaint, nor does it now abut or border upon said river, and is not now, nor was at the time of the filing of the plaintiffs' complaint, riparian to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owners thereof now

have, and at the time of the filing of plaintiffs' complaint had, appropriative and prescriptive rights to divert and use by reasonable methods of diversion, up to 1400 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described as Exception 1; said appropriative and prescriptive rights the court finds having been obtained by plaintiffs Duane M. Folsom and E. Florence Folsom, and their predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1400 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 47 years beginning in 1909. That all of said water so diverted and used on said excepted lands was reasonably necessary for said uses. [3309]

That said following described excepted land, hereinabove referred to as Exception 1 of this finding, is located in Fresno County, California, and more particularly described as:

Exception 1. The NW1/4 of Section 11, Township 12 South, Range 20 East, M.D.B.&M., Fresno County.

Finding 2. That Everett G. Rank and Evelyn Lydia Rank are and were at the time of the filing of the above entitled action, the owners in fee and entitled to the possession of those certain lands located in the County of Fresno, State of California, and more particularly described as follows:

That certain real property located in the County of Fresno, State of California, described as follows:

The W½ of the SW¼ of the SW¼ of Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian according to the United States Government Township Plats.

A portion of Lot 10 of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, bounded by the south and northwest lines of said Lot 10 and by a line commencing on said south line at a point at that distance from the angle formed by said south line and northwest line which when projected at right angles north to said northwest line includes 2.78 acres, and no more. Also the E½ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River; Except therefrom the following: Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet; thence west 800 feet; thence south 840 feet and thence east 800 feet to the point of commencement.

The court finds that the above described real property at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint as amended and supplemented, did and now does abut and border upon said San Joaquin River and was, at the time of the filing of the [3310] above entitled action, at all times mentioned in plaintiffs' complaint as amended and supplemented, and now is riparian to the San Joaquin River (except that property described in Exception 1 of this finding), and that the owners of said lands, excluding said lands hereinafter more particularly described in Exception 1 of this finding, are entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands as said reasonable methods of diversion and beneficial use are hereinafter in these findings described and defined.

The court finds that the following portion of the above described real property, more particularly in this finding hereinafter set forth and described as Exception 1, did not, at the time of the filing of the above entitled action, nor now does abut or border upon said San Joaquin River and is not now nor was, at the time of the filing of plaintiffs' complaint, riparian to said river nor did said real property nor the owners thereof at said times have or now have riparian, appropriative or prescriptive rights to the surface waters of said San Joaquin River.

Exception 1. The W½ of the SW¼ of the SW¼ of Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian according to the United States Government Township Plats.

Finding 3. That Evelyn Lydia Rank is and was at the time of the filing of the above entitled action, the owner in fee and entitled to the possession of the following described real property located in the County of Fresno, State of California, and more particularly described as follows:

That portion of the SE¼ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo [3311] Base and Meridian, according to the United States Government Township Plats, described as follows:

Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet, thence west 800 feet; thence south 840 feet and thence east 800 feet to the point of commencement.

That said lands more particularly set forth and described in this finding, at the time of the filing of the above entitled action, did not and do not now abut or border upon said San Joaquin River and at the time of the filing of the above entitled action, were not and are not now riparian to the San Joaquin River and at the time of the filing of the above entitled action did not nor does the owner of said lands have appropriative or prescriptive rights to the use of the waters of said San Joaquin River on said lands.

Finding 4. That Everett G. Rank is and was at the time of filing of the above entitled action, the owner in fee and entitled to the possession of that certain real property located in the County of Fresno, State of California, and described as follows:

Lots 5 and 9 in Section 2 and Lot 9 in Section 3, in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River which said lands in this paragraph defined and all accretions thereto are commonly known and referred to as "Island No. 1," "Cobbs Island," "Rank Island" and "Elkins Island."

The court finds that all of said above described lands set forth in this said finding, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now do abut and border upon said San Joaquin River and were, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now are riparian to said San Joaquin River [3312] and said lands and the owner thereof was at the time of filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River

necessary for beneficial uses on said above described lands as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

Finding 5. That J. E. Cobb is and was at the time of filing of the above entitled action, the owner in fee and entitled to the possession of the following described real property located in the County of Madera, State of California, and more particularly described as:

In Section 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, the area described as follows: Beginning at an iron pipe which is S 61° 42′ W. 1131.4 feet from an iron pipe on the north line of said Section 21, which is 674.0 feet easterly from the northwest corner of said Section 21; thence S 61° 42′ W. 268.6 feet to an iron pipe; thence S 50° 14′ W. 667.7 feet to an iron pipe; thence East parallel with and 1088.3 feet south of the north line of said section, a distance of 3148.8 feet, to an iron pipe; thence East to the intersection with the easterly boundary line of Lot 1 of said section; thence following the easterly boundary line of said Lot 1 northeasterly to a point which is 534.9 feet southerly at right angles from the north line of said section; thence West parallel with and 534.9 feet south of the north line of said section to an iron pipe; thence West a distance of 3132.3 feet to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of E½ of Section 9 lying in Madera

County and NW¼ of NW¼ and Lots 1 and 2 in Section 10, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

That all of the said above described real property, excepting the property described in Exception 1 and Exception 2 of this finding, did at the time of the filing of the above entitled [3313] action, at all times mentioned in plaintiffs' complaint as amended and supplemented, and now does abut and border upon the said San Joaquin River and at all of said times was and now is riparian to said San Joaquin River and said land and the owner thereof was at said times and now is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands (excepting those lands described in Exceptions 1 and 2 of this finding), as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this finding, did not abut nor border upon said San Joaquin River at the time of the filing of plaintiffs' complaint, nor does it now abut or border upon said river, and is not now, nor was at the time of the filing of plaintiffs' complaint,

riparian to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owner thereof now has, and at the time of the filing of plaintiffs' complaint, had prescriptive rights to divert and use, by reasonable methods of diversion, up to 1000 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described in Exception 1; said prescriptive rights the court finds having been obtained by plaintiff J. E. Cobb, and his predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the [3314] irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1000 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 25 years prior to filing the above entitled action. That all of said water so diverted and used on said lands described in Exception 1 of this finding was reasonably necessary for said uses.

Exception 1. Those portions of the real property hereinbefore and in this finding described lying in Section 20, Township 12 South, Range 20 East, M.D.B. & M., Madera County.

Exception 2. The NE¼ of Section 9, Township

12 South, Range 20 East, M.D.B. & M., lying in Madera County,

which said lands described in said Exception 2 of these findings the court finds did not at the time of the filing of the above entitled action, nor do not now abut or border on said San Joaquin River, and were not at said times and are not now riparian to said river nor does the owner thereof have riparian, prescriptive or appropriative rights to the waters of said San Joaquin River for use on said lands described in Exception 2 hereof.

Finding 6. That J. E. Cobb and Ruby Cobb are and were at the time of filing of the above entitled action, and now are, the owners in fee and entitled to the possession of the following described real property located in the County of Madera, California, and more particularly described as:

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian: Southeasterly one-half of SW¼ and that portion of SE¼ lying W of San Joaquin River; [3315] and all lands contiguous thereto to the center of the San Joaquin River; (less 7.58 ac. Highway off W side of SE¼ as said lands are set forth in Vol. 291 of Records, Page 234, Madera County Recorder's Office).

A parcel of land in Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, described as beginning at an iron pipe which is S 61° 42' W, 1400 feet from a pipe on N line of Section 21 which is 674 feet Easterly from

NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning.

That all of said above described real property, excepting the property described in Exception 1 and Exception 2 of this said finding, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint as amended and supplemented, did and now does abut and border upon the said San Joaquin River and at the time of the filing of the above entitled action and was, at all times mentioned in plaintiffs' complaint as amended and supplemented, and now is riparian to the San Joaquin River, and the owners there of are entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands (excepting those lands described in Exceptions 1 and 2 of this finding), as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this finding did not abut nor border upon said San Joaquin River at the time of the filing of plaintiffs' complaint, nor does it now abut or border upon said river, and is not now, nor was

at the time of the filing of the plaintiffs' complaint, riparian [3316] to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owners thereof now have, and at the time of the filing of plaintiffs' complaint had, prescriptive rights to divert and use, by reasonable methods of diversion, up to 1025 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described as Exception 1; said prescriptive rights the court finds having been obtained by plaintiffs J. E. Cobb and Ruby Cobb, and their predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1025 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 14 years prior to filing the above entitled action. That all of said water so diverted and used on said excepted lands was reasonably necessary for said uses.

Exception 1. All that portion of the Southeasterly one-half of SW¼ of said Section 16, Township 12 South, Range 20 East, M.D.B. & M.

Exception 2. A parcel of land in Section 20,

Township 12 South, Range 20 East, Mount Diablo Base and Meridian, described as beginning at an iron pipe which is S 61° 42′ W, 1400 feet from a pipe on N line of Section 21 which is 674 feet Easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning. [3317]

That said above described property, more particularly set forth and described in Exception 2 hereof, did not at the time of the filing of the above entitled action, and does not now abut or border upon said San Joaquin River and did not at the time of the filing of the above entitled action, nor does not now have either riparian, appropriative or prescriptive rights in and to the waters of the said San Joaquin River for use on said lands described in Exception 2 hereof.

Finding 7. That Lawrence D. Cobb was at the time of the filing of the above entitled action, and now, is the owner in fee and entitled to the possession of that certain real property located in the County of Madera, State of California, and described as follows:

In Section 17, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 1, 2, 3, 4, 5, 6, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; less 1.84 ac. Co. Rd.

In Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 2, 9, 10 and 15, and all of Lots 1, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; Except the area described as follows: A parcel of land in Section 20, Township 12 South, Range 20 East described as beginning at an iron pipe which is S 61° 42′ W, 1400 feet from a pipe on N line of Section 21 which is 674 feet easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning.

In Section 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 5; NW 2.32 ac. of NW¼ of NW¼; S 37.45 ac. of Lots 3 and 4; and all lands contiguous thereto to the center of the San Joaquin River.

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, the area described as follows: Commencing at iron pipe which is South 50° 14′ West, 667.7 feet from an iron pipe which is South 61° 42′ West, 1400 feet from an iron pipe on the North line of Section 21, Township 12 South, Range 20 East, which is 674 [3318] feet Easterly from the Northwest corner of said Section 21; thence South 50° 14′ West, 192.3 feet; thence South 35° 31′ West, 532.3 feet; thence East parallel with and 1643.9 feet South of North line of said Section 21 a distance of 3108.7 feet; thence East to the intersection with the Easterly boundary line of

Lot 3 of said Section 21; thence northeasterly following the Easterly boundary line of Lots 3 and 1 of said Section 21 to a point which is 1088.3 feet Southerly at right angles from the North line of said Section 21; thence West parallel with and 1088.3 feet South of North line of said Section 21 to an iron pipe; thence West a distance of 3148.8 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River.

That all of said above described property in this said finding set forth (except that certain real property described in Exception 1 and Exception 2 of this finding), at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now does abut and border upon said San Joaquin River and was at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is, riparian to said San Joaquin River, and said above described lands in this finding set forth, and the owner thereof is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands (excepting those lands described in Exceptions 1 and 2 of this finding), as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this finding, did not abut nor border upon said San Joaquin River at [3319] the time of the filing of plaintiffs' complaint, nor does it now abut or border upon said river, and is not now, nor was at the time of the filing of the plaintiffs' complaint, riparian to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owner thereof now has, and at the time of the filing of plaintiffs' complaint had and now has prescriptive rights to divert and use, by reasonable methods of diversion, up to 1025 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described as Exception 1; said prescriptive rights the court finds having been obtained by plaintiff Lawrence D. Cobb and his predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1025 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 14 years prior to the filing of the above entitled action. That all of said water so

diverted and used on said excepted lands was reasonably necessary for said uses.

Exception 1. In Madera County, all that portion of Lots 1, 2, 7 and 8 in the NE¼ of Section 20, Township 12 South, Range 20 East, M.D.B.&M., according to the United States Government Township Plats, described as follows:

Beginning at an iron pipe which is S 50° 14′ W, 667.7 feet from an iron pipe which is S 61° 42′ [3320] W, 1400 feet from an iron pipe on the N line of Section 21, Township 12 South, Range 20 East, which is 674 feet easterly from the NW corner of said Section 21; thence S 50° 14′ W, 192.3 feet; thence S 35° 31′ W, 532.3 feet; thence east parallel with and 1643.9 feet south of the N line of said Section 20, to a point on the E line thereof; thence along said E line, N 555.6 feet, thence west parallel with and 1088.3 feet south of the N line of said Section 20 to the point of beginning.

Said land being the same land as shown on Exhibit 1 hereof lying in the NE¼ of Section 20, Township 12 South, Range 20 East, M.D.B.&M., and within the dotted triangle of Exhibit 1 of these findings.

Exception 2. Section 17, Township 12 South, Range 20 East, M.D.B.&M., Lots 1, 2, 3, 4, 5, 6, 7 and 8,

which said property more particularly set forth and described in Exception 2 hereof, the court finds did not at the time of the filing of the above entitled

action and does not now abut or border upon said San Joaquin River nor did the owner of said lands at the time of the filing of the above entitled action have nor does he now have either riparian, appropriative or prescriptive rights in and to the waters of said San Joaquin River for use on said lands described in Exception 2 hereof.

Finding 8. The court finds that Marjorie Sims is and was at the time of the filing of the above entitled action, and now is the owner in fee and entitled to the possession of the following described lands in the County of Fresno, State of California:

Lot 16, Section 9, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

W½ of SW¼ of NW¼; SW¼ of NW¼ of NW¼, Section 15, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, and all lands contiguous thereto to the center of the San Joaquin River.

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 7; [3321] portion of Lot 6 described as: Commencing at NE corner of said lot; thence S 20 rds; thence W 40 rds; thence S 20 rds; thence W to U. S. Seg. line; thence northwesterly to N line of said lot; thence E to commencement; and all lands contiguous thereto to the center of the San Joaquin River; less S 12 rds. frontage on County Road, running E from SW corner of said tract; also less portions of Lots 6 and 7, lying W of County Road.

In Section 16, Township 12° South, Range 20 East, Mount Diablo Base and Meridian, portion of Government Lots 6 and 7 in NE¼, lying W of road; and all lands contiguous thereto to the center of the San Joaquin River; less any portion lying S of a line drawn 120 rds S of and parallel to N line of Section 16,

and the court finds that all of said above described real property in this finding described at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended, and supplemented, did and now does abut and border upon said San Joaquin River and was at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended, and supplemented, and now is, riparian to said San Joaquin River, and said above described lands in this finding set forth, and the owner thereof is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands (excepting those lands described in Exception 1 of this finding), as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this finding, did not abut nor border upon said San Joaquin River at the time of the fil-

ing of plaintiffs' complaint, nor does it now abut or border upon said river, and is not now, nor was [3322] at the time of the filing of the plaintiffs' complaint, riparian to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owner thereof now has, and at the time of the filing of plaintiffs' complaint had appropriative and prescriptive rights to divert and use, by reasonable methods of diversion, up to 1000 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described as Exception 1; said appropriative and prescriptive rights the court finds having been obtained by plaintiff Marjorie Sims and her predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1000 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 49 years prior to the time of filing the above entitled action. That all of said water so diverted and used on said excepted lands was reasonably necessary for said uses.

Exception 1. W½ of SW¼ of NW¼; SW¼ of NW¼ of NW¼, Section 15, Township 12 South,

Range 20 East, Mount Diablo Base and Meridian; Fresno County.

Finding 9. The court finds that Marjorie Sims is and was at the time of the filing of the above entitled action, and now is, the owner in fee and entitled to the possession of the following described real property located in Madera County, State of California: [3323]

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, commencing at an iron pipe on the N line of Section 21 which is 675.0 ft. easterly from the NW corner of said Section 21; thence S 61° 42' W 1131.4 feet; thence E parallel with and 534.9 feet S of the N line of said Section 21, a distance of 3132.3 feet; thence E to the intersection with the easterly boundary line of Lot 1 of said Section 21; thence Northeasterly following the Easterly boundary line of said Lot 1 to the NE corner of said Lot 1; thence W along the N line of said Section 21 to an iron pipe; thence W a distance of 3094.0 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River; less 1.48 ac. in Section 21 to the State of California for road purposes,

and the court finds that all of said above described real property in this finding described at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now does abut and border upon said San Joaquin River and was at the time

of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is, riparian to said San Joaquin River, and said above described lands in this finding set forth, and the owner thereof is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands (excepting those lands described in Exception 1 of this finding), as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

The court finds that the following portion of the first above described real property, more particularly in this finding set forth and described as Exception 1 of this findings, did not abut nor border upon said San Joaquin River at the time of the filing of plaintiffs' complaint, nor does it now [3324] abut or border upon said river, and is not now, nor was at the time of the filing of the plaintiffs' complaint, riparian to said San Joaquin River, but that said lands described in Exception 1 of this finding, and the owner thereof now has, and at the time of the filing of plaintiffs' complaint had, prescriptive rights to divert and use, by reasonable methods of diversion, up to 1025 gallons, per minute, of the waters of said San Joaquin River for the irrigation of crops and other beneficial uses upon the lands hereinafter in this finding set forth and described as Exception 1; said prescriptive rights the court finds having been obtained by plaintiff Mar-

jorie Sims and her predecessors in title and interest, by their continuous, open, notorious and adverse taking, diversion, appropriation and use upon said excepted lands for the irrigation of crops and other beneficial uses upon said excepted lands under claim of right thereto of up to 1025 gallons, per minute, of said waters of said San Joaquin River, by means of pumping said waters directly from said river and conveying the same by means of ditches, pipes and conduits to and for said uses on said lands described in Exception 1 hereof, for a period of 25 years prior to the time of the filing of the above entitled action. That all of said water so diverted and used on said excepted lands was reasonably necessary for said uses.

Exception 1. That portion of the lands hereinabove described in this said paragraph 9 of these findings, lying in Section 20 Township 12 South, Range 20 East, M.D.B.&M., Madera County.

In making a finding of the amount of water that any named plaintiff is entitled to under a prescriptive or appropriative right anywhere in these findings, it is not the intention of the court to attempt to divide the waters of the [3325] San Joaquin River between the plaintiffs; the purpose of making a finding on prescriptive or appropriative rights being to qualify the named plaintiffs as a proper party to represent the class action involving prescriptive or appropriative rights although a specific finding as to the right to a specific amount and use of water must of necessity be made in such a case.

Finding 10. The court finds that Leslie L. Howard, also known as L. L. Howard and Alma Howard, are and were at the time of the filing of the above entitled action, and now are, the owners in fee and entitled to the possession of the following described real property located in the County of Madera, State of California:

In Section 30, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 12; also all that land lying between the westerly line of said lot and the San Joaquin River; Lots 7 and 9 of Walker Ranch; and that portion of Lot 3 of Walker Ranch, containing 6.62 acres described as follows:

Beginning at the northeast corner of Lot 7 of said Walker Ranch thence North 200 feet; thence at right angles West and parallel with the North line of said Lot 7, 1504 feet to a point; thence at right angles south to Southerly line of said Lot 3, being the line dividing said Lot 3 from Lot 8 of said tract; thence in a Southeasterly direction along the line dividing said Lot 3 from Lot 8 of said tract to the Northwesterly corner of said Lot 7; thence east along the North line of said Lot 7 to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River. All above Walker Ranch lots as shown on "Map of Walker Ranch" recorded May 12, 1919, in Book 4, pages 51 and 52 of maps, Madera County Records.

Also right of way over a strip of land 30 feet wide off of and over West side of Lot 5 in Section 30, Township 12 South, Range 20 East, Mount Diablo

Base and Meridian, extending from Bluff to the River Northwesterly and Southeasterly through said Lot 5, along river to San Joaquin River leading to said Lot 12; and all lands contiguous thereto to the center of the San Joaquin River.

The court further finds that all of said above described real [3326] property in this finding described, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now does abut and border upon said San Joaquin River and was at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is, riparian to said San Joaquin River, and the owners thereof are entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands, as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

Finding 11. The court finds that Robert C. Arnold, also known as "Red" Arnold, became a named party plaintiff in the above entitled action by order of the above entitled court on or about the 20th day of June, 1952, and at said time was and now is the owner in fee and entitled to the possession of the following described real property located in the County of Madera, State of California; and that at the time of the filing of the above entitled

complaint said following described lands were included in the class action set forth in plaintiffs' complaint:

Parcel No. 1: The SE¼ and the S½ of the NE¼ of Section 33, Township 11 South, Range 20 East, M.D.B.&M.

The SW¼, the S½ of the NW¼, the W½ of the SE¼ and the SW¼ of the NE¼ of Section 34, Township 11 South, Range 20 East, M.D.B.&M. and all that portion of the SE¼ of the NE¼ and the E½ of the SE¼ of Section 34, Township 11 South, Range 20 East, M.D.B.&M., and that portion of Lots 1 to 8 both inclusive, of Section 3, Township 12 South, Range 20 East, M.D.B.&M., lying West of the apparent meandering line constituting the eastern boundary of Parcel 26, Fresno Drawing No. 214-204-2290, Exhibit 1 of the Findings. [3327]

Parcel No. 2: The N½ of the SW¼ and the SW¼ of SW¼, and Lots 10 and 11 in Section 3; the SE¼ the S½ of NE¼, Lots 1 and 2 in Section 4, all in Township 12 South, Range 20 East, M.D.B.&M., according to United States Government Township Plats.

That the following portion of the above described property, at the time the said Robert C. Arnold, also known as "Red" Arnold, became a named plaintiff, at the time of the filing of the complaint in the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, abutted and bordered upon the said San Joaquin River, viz:

That portion of Lots 1, 2, 3, 6, 7 and 8 of Section 3, Township 12 South, Range 20 East, M.D.B. & M., lying West of the apparent meandering line constituting the eastern boundary of Parcel 26, Fresno Drawing No. 214-204-2290, Exhibit 1 of the Findings; and the N½ of the SW¼; the SW¼ of the SW¼, and Lots 10 and 11 in Section 3, Township 12 South, Range 20 East, M.D.B. & M.,

and is and was at said times and now is, riparian to said San Joaquin River, and the owner thereof is entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands, as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings. That the lands of said Robert C. Arnold hereinbefore not found to have riparian rights did not at the time of commencement of this action have appropriative or prescriptive rights to San Joaquin River water.

Finding 12. The court finds that Henry H. Engelman and Emma Engelman, are and were at the time they became named plaintiffs herein, and now are, the owners in fee and entitled to the possession of the following described real property located in the County of Fresno, State of California:

Lots 7 and 8 in Section 8, Township 13 South, Range 18 East of Sycamore Ranch Tract, according to the map thereof recorded July 17, 1912, in Book

8 of Records of Surveys at pages 7 and 8, in the office of the County Recorder of said [3328] County, except that portion lying north of a slough running across said land.

The court further finds that all of said above described real property in this finding described, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now does abut and border upon said San Joaquin River and was at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is, riparian to said San Joaquin River, and the said lands and the owners thereof are entitled to take, divert and use, now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for beneficial uses on said above described lands, as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

Finding 13. The court finds that C. A. Hawkins, at the time he became a named party plaintiff in the above entitled action, was and is the owner in fee and entitled to the possession of the following described real property located in the County of Fresno, State of California:

Lots 33 to 40 inclusive, and 43 to 46 inclusive, 51 to 54 inclusive, and 59 to 62 inclusive, in Section 17, Township 13 South, Range 19 East, M.D.B. & M., consisting of 396.36 acres.

That none of the real property described in this finding at the time of the filing of the above entitled complaint, did nor now does abut or border upon said San Joaquin River nor did the owner of said lands, at the time of the filing of the above entitled action, have nor now has any riparian, appropriative or prescriptive rights to the waters of said San Joaquin River for use on said lands but does have overlying [3329] rights in the nature of riparian rights as hereinafter in these findings found.

Finding 14. The court finds that Amelia Ann Holland was, at the time of the filing of the above entitled action, the owner in fee and entitled to the possession of the following described real property, but that after the above entitled action was filed, Holland Land & Development Co. became the owner of all of the following described real property and that on or about the 31st day of January, 1952 the above entitled court by its order dated said day substituted Holland Land & Development Co. as a party plaintiff instead of the said Amelia Ann Holland:

That certain real property located in the County of Fresno, State of California, described as follows:

Lot 13, Section 35, Township 11 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Lots 9 and 10, Section 1, Township 12 South, Range 20 East, M.D.B. & M.; and all lands con-

tiguous thereto to the center of the San Joaquin River.

Lot 11, Section 2, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Lot 10, Section 2, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River; less 2.78 acres in SW. corner of Lot 10, Section 2, Township 12 South, Range 20 East, M.D.B. & M.

Lots 7 to 10 inclusive; Portion of Lot 6, lying West of Canal in Section 29, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of Government Lot 3 and that portion of Lot 299, Perrin Colony No. 2, lying N and W of a line described as: Beginning in North line of Section 32, 1811 feet West from Northeast corner thereof, said point being in center of upper San Joaquin Canal; thence following said line South 35° 30′ West 316 feet; thence South 62° 20′ West 130 feet; thence South 31° 23′ West 165 feet; thence [3330] South 74° 29′ West 540 feet; thence South 72° 47′ West 600 feet; thence South 67° 39′ West 400 feet; thence leaving said Canal North 80° 20′ West 232 feet to Southerly water edge of San Joaquin River; Section 32, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Lots 269 to 274, lying West of Canal, Section 28, Township 12 South, Range 20

East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Portion of Lots 273, 274 described as: Beginning at a point 1406.8 feet North 0° 04′ East of corner common to Sections 28, 29, 32, 33; thence North 40° 41′ East 621.5 fe t; thence North 28° 04′ East 362.5 feet; thence North 51° 17′ West 100 feet; thence North 71° 34′ West 131.75 feet to a point in center line of Old San Joaquin Canal; thence along center of Canal South 15° 06′ West 352 feet; thence South 40° 16′ West 434.5 feet; thence South 0° 04′ West 224.1 feet to point of beginning, Section 28, Township 12 South, Range 20 East, M.D.B. & M.

Perrin Colony No. 2: Lots 285 to 287; portion of Lots 288 to 290, lying West of Canal; Section 29, Township 12 South, Range 20 East, M.D.B. & M.

SE ¼ of NE¼, Section 29, and portions west of canal in SW¼ of NW¼, Section 28, NW¼ of SW¼, Section 28, NE ¼ of SE¼, Section 29, and SE¼ of SE¼, Section 29, Township 12 South, Range 20 East, M.D.B. & M.

The court finds that all of said above described real property (with the exception of that portion of the above described real property hereinafter more particularly described as Exception 1), in this finding described, at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now does abut and border upon said San Joaquin River and was at the time of the filing of the above

entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now is, riparian to said San Joaquin River, and the owner thereof is entitled to take, divert and use now and in the future, by reasonable methods of diversion and use, all waters of said San Joaquin River necessary for [3331] beneficial uses on said above described lands, as said reasonable methods of diversion and beneficial use are hereinafter more particularly set forth and defined in these findings.

Exception 1.

A. Perrin Colony No. 2: Lots 271 to 274 inclusive, lying west of Canal, Section 28, Township 12 South, Range 20 East, M.D.B.&M.; and all lands contiguous thereto to the center of the San Joaquin River.

B. Perrin Colony No. 2: Portion of Lots 273, 274 described as: Beginning at a point 1406.8 feet North 0° 04' East of corner common to Sections 28, 29, 32, 33; thence North 40° 41' East 621.5 feet; thence North 28° 04' East 362.5 feet; thence North 51° 17' West 100 feet thence North 71° 34' West 131.75 feet to a point in center line of Old San Joaquin Canal; thence along center of Canal South 15° 06' West 352 feet; thence South 40° 16' West 434.5 feet; thence South 0° 04' West 224.1 feet to point of beginning, Section 28, Township 12 South, Range 20 East, M.D.B.&M.; and all lands contiguous thereto to the center of the San Joaquin River.

C. Perrin Colony No. 2: Lots 285 to 287; Portion of Lots 288 to 290, lying West of Canal; Sec-

tion 29, Township 12 South, Range 20 East, Mount Diablo Base & Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

D. SE¼ of NE¼, Section 29, and portions west of canal in SW¼ of NW¼, Section 28, NW¼ of SW¼, Section 28, NE¼ of SE¼, Section 29, and SE¼ of SE¼, Section 29, Township 12 South, Range 20 East, M.D.B.&M.

That said lands more particularly described in the foregoing Exception 1 of this finding, at the time of the filing of plaintiffs' complaint, did not, nor do not now, abut or border upon said San Joaquin River nor did the owner of said excepted lands, at the time of the filing of the above entitled complaint, nor does the owner now have any riparian, prescriptive or appropriative rights to the use of said water of said San Joaquin River on said lands more particularly set forth and described in Exception 1 of this finding. [3333]

Finding 15. The court finds that Jesse Frank Martin is and was, at the time he became a named plaintiff herein, the owner in fee and entitled to the possession of the following described real property, located in the County of Madera, State of California:

Parcel I: All of Lot 3, excepting N. 30 acres, Section 8, Township 13 South, Range 18 East, M.D.B.&.M., 29.45 acres.

Parcel II: N. 20 acres of Lot 4, less N. 30 feet Co. Rd., Section 8, Township 13 South, Range 18 East, M.D.B.&M., 19.10 acres.

Parcell III: Beginning at a point on W. line

of Lot 4 of Section 8 which bears S. 658.53 ft. from NW corner of Lot 4, thence N. 89° 41' East 1322.98 feet to point on East line of Lot 4 which bears S. 658.83 feet from NE corner of Lot 4, thence S. 541.17 ft., thence N. 81° 53' West 555 ft., thence N. 67° 12' West 505 ft., thence North 51° 19' West 393.20 ft. to a point on West line of Lot 4, thence along West line of Lot 4 North 14.67 feet to point of beginning, reserving West 30 feet road easement; Section 8, Township 13 South, Range 18 East, M.D.B.&.M., 11.16 acres.

Parcel IV: NW¼ of SW¼ (40.09 acres, less West 30 feet Co. Rd.) Section 5, Township 13 South, Range 18 East, M.D.B.&M., 39.19 acres.

Parcel V: S½ of SW¼ of SW¼ (20.40 acres reserving W. & S. 30 feet for public roads) Section 5, Township 13 South, Range 18 East, M.D.B.&M., 19.13 acres.

Parcel VI: SE¼ of NW¼; E½ of E½ of SW¼ of NW¼ (50.57 acres, less S. 20 feet Co. Rd.), Section 5, Township 13 South, Range 18 East, M.D.B.&M., 49.82 acres.

Parcel VII: Lot 1, Section 6, Township 13 South, Range 18 East, M.D.B.&M. [3333]

Parcel VIII: SE¼ of SE¼ (77.85 acres less E. 30 ft. Co. Rd.) Section 6, Township 13 South, Range 18 East, M.D.B.&M., 76.95 acres.

Parcel IX: Lot 1, Section 7, Township 13 South, Range 18 East, M.D.B.&.M., 24.50 acres.

The court finds that Parcels I, II, III, VII and IX of the property hereinbefore set forth and described in this said Finding 15, did at the time of

the filing of the above entitled action, at all times mentioned in plaintiffs' complaint as amended and supplemented, and now does abut and border upon said San Joaquin River and is riparian to said San Joaquin River, but that Miller & Lux, Inc., the former owners of said Parcels I, II, III, VII and IX, when they sold said land to the plaintiff and his predecessors in title, by contract or deed containing one or more of the reservations quoted in Finding 17, reserved certain water rights in and to said land and that the said Jesse Frank Martin, owner of said Parcels I, II, III, VII and IX of this finding is estopped from objecting to or enjoining the defendant United States of America and defendant Bureau officials and employees from the storage and diversion of waters at Friant Dam, by means of said Dam and the Friant-Madera Canal and the Friant-Kern Canal.

The court further finds that Parcels IV, V, VI and VIII of this said finding hereinbefore set forth and described, were not at the time of the filing of the above entitled complaint, at the time the said Jesse Frank Martin became a named party plaintiff, and are not now riparian to said San Joaquin River.

There was not sufficient evidence introduced for the court to make a finding as to whether the owner of said lands [3334] in this finding set forth and described has prescriptive rights to use the waters of said San Joaquin River on said lands and the court makes no finding in this regard.

Finding 16. The court finds that plaintiff Carl

Harry Johnson, at the time he became a named party plaintiff herein, was and now is the owner in fee and entitled to the possession of the following described lands located in the County of Madera, State of California and more particularly described as follows:

NW¼ of the NE¼ of Section 6, Township 13 South, Range 18 East, M.D.B.&M., less the north 30 feet for county road, containing 39.13 acres.

All that portion of the E½ of the SW¼ of NE¼ described as: Beginning at a point which bears north 580 feet from the southeast corner of the SW¼ of the NE¼ of Section 6, thence northerly 60° 62½′ west, 707.50 feet, thence north 485.30 feet, thence along the north line of the S½ of the N½ of Section 6, South 89° 58′ east, 660 feet, to the northeast corner of the SW¼ of the NE¼ of Section 6, thence south 740.32 feet to point of beginning. Containing 9.28 acres.

All that portion of the N½ of the NW¼ of Section 6 lying east of the County road to Skaggs Bridge, containing 37.69 acres.

The court finds that none of said above described lands set forth in this finding have, at the time of filing the above entitled action, abutted or bordered nor do now abut or border upon said San Joaquin River, nor does the said plaintiff as owner thereof, have any riparian rights to use the waters of said San Joaquin River on said lands set forth in this finding. There was no evidence introduced as to whether any of the lands in this finding have prescriptive rights to use the waters of said San

Joaquin River and the court makes no finding in this regard.

Finding 17. The court finds that those certain lands located in the counties of Madera and Fresno, State of California, and designated as the following Parcels: [3335]

118, 121, 134, 135, 137, 138, 141, 143A, 143B, 144, 146, 148, 151, 154A, 154B, 155, 158, 163, 164, 165, 167, 172, 176, 177, 178, 181, 182, 183, 187A, 187B, 190, 191, 192, 197, 198A, 198B, 198C, 199, 204, 206, 207, 209 and 210

of Exhibit 1 of these findings were formerly owned by Miller & Lux, Inc., and were sold by Miller & Lux, Inc., to the present owners of said above described parcels of land in this finding set forth or to their predecessors in title, by deeds or contracts containing one or more of the following clauses reserving to Miller & Lux, Inc. water rights appurtenant to said parcels of land in this said finding above enumerated and described:

Clause a.

"All water rights and riparian rights, if any, appurtenant to said land, except as otherwise expressly herein provided."

Clause c.

"All water rights, if any, whether riparian, appropriative or prescriptive, including the right to receive water released from storage reservoirs on the San Joaquin River."

Clause e.

"* * * the party of the second part waives any right which he may have to object to the storage

and/or impounding of the waters of the San Joaquin River, or its tributaries, by the party of the first part, or by the San Joaquin River Water Storage District or by any public district or private company, to which the party of the first part may or has granted the right to store said waters, and the party of the second part hereby expressly consents to said storage without limit, and relinquishes any right to receive water released from said storage; the party of the second part also waives and relinquishes any right which he may have to object to the said Water Storage District, and/or the party of the first part, and its assigns, diverting the waters of the said San Joaquin River at any point or points thereon, to riparian or non-riparian lands, within or without the watershed; said right of storage and said right to divert the waters of said river shall [3336] be considered as an easement in and shall bind said land, regardless of the ownership thereof."

Clause f.

"This conveyance is made on condition that the riparian rights of the land herein conveyed shall always remain and be exercised subject and subordinate to the water rights of the party of the first part, its successors, subsidiary and affiliated companies (including mutual water companies in which the party of the first part owns stock), whether such water rights be riparian, appropriative or prescriptive, to the end that the party of the first part, its successors, subsidiary and affiliated companies may use, enjoy and transfer said

water rights, including the right to contract for or permit storage on the upper reaches of the San Joaquin River, without let or hindrance from the parties of the second part, their heirs and assigns. This covenant and conditions shall not be construed as an extinguishment of the riparian rights of the land herein conveyed, but as an estoppel in favor of the party of the first part, its successors, subsidiary and affiliated companies, against the parties of the second part, their heirs and assigns to the extent herein provided."

Clause g.

"The land herein conveyed is part of a larger tract of land belonging to the Grantor bordering on a natural stream and watercourse and this conveyance shall in no way affect the riparian rights of the remainder of said tract of land retained and owned by the Grantor, but such riparian rights shall be preserved and be unaffected by this conveyance."

Clause g-2.

"In case said land is part of a larger tract of land belonging to the Seller, and the sale thereof shall separate the balance of the land owned by the Seller from any stream or watercourse, such separation shall in no way affect the riparian rights of the land so retained by the Seller, but such riparian rights shall be preserved and be unaffected by such sale."

Clause i.

"It is further understood that this conveyance is made on the express condition that the grantee

for and on behalf of himself, his heirs and assigns, waives and relinquishes any right which he may have to object to the storage and/or impounding of the waters of the San Joaquin River, or its tributaries, by grantor, or by any public or semi-public district or private company to which the grantor may or has granted the right to store said waters and [3337] grantee hereby expressly consents to said storage without limit, and relinquishes any right to receive water released from said storage; grantee also relinquishes and waives any right he may have to object to grantor and/or its assigns or successors diverting waters of the San Joaquin River at any point or points thereon, to riparian or non-riparian lands, within or without the watershed of said River; said right of storage and said right to divert the waters of said River shall be considered as an easement in and shall bind the land herein conveyed, regardless of ownership."

Clause j.

"The right to conduct or carry excess or waste water from any irrigation canal owned by Grantor, the San Joaquin & Kings River Canal & Irrigation Company, Incorporated, or the San Luis Canal Company, a mutual water company, across the land herein conveyed, and Grantee shall not acquire any right in or to said waters, and any use which Grantee shall make of said water shall be deemed to be permissive and not under claim of right."

Clause k.

This Conveyance is made subject to: "That certain indenture dated the 14th day of September,

1939, between Miller & Lux Incorporated, a corporation, and Gravelly Ford Canal Company, as Grantors, and the United States of America, as Grantee, wherein, among other things, said Grantors conveyed to said Grantee certain of Grantor's rights in and to the waters of the San Joaquin River, and in and to the use thereof, including the right against said Grantors and the lands and other properties described in said conveyance to perpetually divert, store and use said water within and without the watershed of said river. The lands herein conveyed are described in said conveyance to the United States. Said deed of conveyance was recorded on September 18, 1939, in the office of the County Recorder of each of the following Counties, as follows: in Fresno County, California, in Vol. 1810 of Official Records, at page 25; in Madera County, California, in Vol. 247 of Official Records, at page 88; in Merced County, California, in Vol. 623 of Official Records, at page 410; in Stanislaus County, California, in Vol. 703 of Official Records, at page 1."

Clause 1.

"That certain contract between the United States of America and The San Joaquin & Kings River Canal & Irrigation Company, Incorporated, the Columbia Canal Company, the San Luis Canal Company and the Firebaugh Canal Company for the exchange of water between said companies and the United States, which contract was recorded on September 18, 1939, [3338] in the office of the County Recorder of each of the following Counties as

follows: in Fresno County, California, in Vol. 1810 of Officials Records, at page 50; in Madera County, California, in Vol. 247 of Official Records, at page 113; in Merced County, California, in Vol. 623 of Official Records, at page 417; in Stanislaus County, California, in Vol. 704 of Official Records, at page 1. Attached to and made a part of said contract is an instrument wherein and whereby Grantor herein disclaims any interest in the waters to be stored and diverted by the United States pursuant to the terms of said contract and consents, as a stockholder, to the companies parties to said contract executing the same."

Clause m.

"All other contracts and conveyances of record relating to or affecting water rights of land herein conveyed."

Clause n.

"That until Grantor or the United States of America desires to change the place of use of waters of the San Joaquin River now diverted or permitted to flow upon the lands herein conveyed, the United States or Grantor may divert or cause to be diverted from the San Joaquin River or permit to flow upon said lands for the irrigation thereof, in the customary manner, the quantity of water heretofore applied according to past usage. Grantee shall acquire no right, title or interest in or to said water or the use thereof by virtue of said application of said water to said lands."

Clause o.

"The right and title to all water being beneath

the surface of the above described land, excepting so much of said water as the party of second part may develop upon said premises for exclusive use thereupon, and upon any adjacent land not to exceed 160 acres."

Clause p.

"The right and title to all waters being beneath the surface of the above described land, excepting so much of said water as the party of the second part may develop upon said premises for exclusive use thereupon."

Clause q.

"All water rights, if any, whether riparian, appropriative or prescriptive, including the right to receive water released from storage reservoirs on the San Joaquin River. The parties of the second part, their heirs, successors and assigns waive the [3339] right to object to the storage or diversion of the waters of the San Joaquin River by party of the first part, or its successors and assigns."

Clause r.

"Grantee waives and relinquishes any right which he may have to object to the storage and/or impounding of the waters of the San Joaquin River, or its tributaries, by the Grantor, or by the United States, or any agency thereof, or by any public or semi-public district or private company to which the Grantor may or has granted the right to store said waters, and the Grantee hereby expressly consents to said storage without limit, and relinquishes any right to receive water released from said storage; the Grantee also relinquishes and waives any

right he may have to object to the Grantor and/or its assigns or successors diverting the waters of the San Joaquin River at any point or points thereon, to riparian or non-riparian lands, within or without the watershed of said River; said right of storage and said right to divert the waters of said River shall be considered as an easement in and shall bind the land herein conveyed, regardless of ownership."

Clause s.

"It is further understood and agreed that the Grantee waives any right which she may have to object to the storage and/or impounding of the waters of the San Joaquin River, or its tributaries, by the Grantor, or by the United States, or any agency thereof, by any public district or private company to which the Grantor may or has granted the right to store said waters, and the Grantee hereby expressly consents to said storage without limit, and relinquishes any right to receive water released from said storage; the Grantee also relinquishes and waives any right she may have to object to the Grantor and its assigns diverting the waters of the said San Joaquin River at any point, or points thereon, to riparian or non-riparian lands, within or without the watershed of said river; said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land regardless of the ownership thereof."

Clause t.

"It is further covenanted and agreed, and this

conveyance is made on condition that the party of the second part waives any right which he may have to object to the storage and/or impounding of the waters of the San Joaquin River, or its tributaries, by the party of the first part, or by the San Joaquin River Water Storage District, or by any public district or private company to which the party of [3340] the first part may or has granted the right to store said waters, and the party of the second part hereby expressly consents to said storage without limit, and relinquishes any right to receive water released from said storage; the party of the second part also waives and relinquishes any right which he may have to object to the said Water Storage District, and/or the party of the first part and its assigns, diverting the waters of the San Joaquin River at any point or points thereon, to riparian lands within or without the watershed; said right of storage and said right to divert the waters of said river shall be considered as an easement in and shall bind said land, regardless of the ownership thereof."

Clause u.

"The right and title to all waters being beneath the surface of the above described land, excepting so much of said water as the party of the second part may develop upon said premises for exclusive use thereupon, and upon any adjoining land not to exceed 160 acres."

The court finds that the following parcels of land hereinabove in this finding enumerated and designated by the following parcel numbers on

Exhibit 1 of these findings (in some cases the parcels being divided into tracts), contain the following Water Right Reservation clauses hereinbefore and in this finding listed by alphabetical letters "a" to "u":

Parcel Number (Exhibit 1)	Tract or Parcel	Water Right Reservation Clauses
118	———	f,g.
121	Tract 1*	c,e.
121	Tract 2*	a,u
121	Tract 3*	a,p.
134	———*	c,r,g.
135	Parcels 1 & 2*	c,g,s.
137	———*	c,g,s.
138	Tract 1 contains Parcels 1, 2 & 3*	c.
138	Tract 2*	c,g,r.
141	Parcels 1 & 2*	f,g.
143-A	Tract 1	f,g.
143-A	Tract 2	f,g.
143-B	Tract 1	f,g.
144	Parcel 1	f,g.
144	Parcel 2	e,e.
146	———*	f,g.
148	———	f,g.
151	———	c,g,s.
154-A	———	f,g.
154-B	———	f,g.
155	———	f,g.
158	———	f,g.
163	———	f,g.
164	———	c,g.
165	———*	a.
167	———	f,g.
172	———*	a.
176	Tract 1*	a.
176	Tract 2*	c,t.
177	———	f,g.
178	Tract 1*	a,g-2,p.

Parcel Number (Exhibit 1)	Tract or Parcel	Water Right Reservation Clauses
178	Tract 2	a.
181	———	f.g.
182	Tract 1*	a.p.
182	Tract 2*	c.g.
183	E½ NW¼ SE¼	a.
183	W½ NW¼ SE¼	f.g.
183	W½ Lot	f.g.
187-A	———	c.g.j.k.
187-B	———	l.m.n.
190	———	c.e.g.
191	———*	f.g.
192	———*	q.
197	———*	c.g.s.
198-A	Parcels 1, 2 & 3*	c.g.r.
198-B	Parcels 1, 2 & 3*	c.g.r.
198-C	Parcels 1, 2 & 3*	c.g.r.
199	———	f.g.
204	———*	c.g.r.
206	———	f.g.
207	———	f.g.
209	———	f.g.
210	———*	c.e.

The court further finds that Miller & Lux, Inc., prior to filing of the above entitled action, sold and assigned the reserved water rights hereinabove enumerated to the defendant United States of America and that by reason of the reservations hereinbefore in this finding enumerated, and the sale or assignment of said reserved water rights to the defendant United States of America, the owners of the parcels of land heretofore and in this finding set forth and enumerated, are, except as to prescriptive

* Data taken from photostatic copy of deed introduced by Government (Defendant Officials' Exhibit C.)

rights if any, and except as to the overlying rights described in finding No. 21, estopped to object to the storage behind Friant Dam or the diversion of the waters of the San Joaquin River through the Friant-Madera Canal and Friant-Kern Canal by the defendant United States of America and defendant Bureau officials and employees.

Sufficient evidence was not introduced regarding prescriptive rights to the waters of the San Joaquin River, if any, of any of the owners of the parcels of land heretofore and in this finding set forth and described and for this reason the court makes no finding as to the existence or non-existence of any prescriptive rights of the owners of the parcels of land hereinbefore and in this finding set forth and enumerated which may have been obtained after said contracts and deeds from Miller & Lux, Inc. were executed. [3343]

Finding 18. The court finds that at the time of the filing of the above entitled action or during the course of the trial herein, the owners or former owners of those certain lands located in the Counties of Madera and Fresno, State of California, and designated as Parcels 1, 2, 5, 6, 9, 10, 11, 13, 15, 16, 17, 18, 19, 21, 24, 25, 31, 32, 33, 34, 36, 38, 43, 44A, 45, 47, 52, 53, 54, 56, 57, 61, 64, 65, 66, 67, 69, 73, 74, 75, 76, 77, 78, 79, 81, 84, 85, 90, 92, 99B, 102A, 102B, 103, 104, 108, 109, 113, 114, 115, 120, 122, 123, 125, 126, 127, 128, 129, 130, 132, 133, 136, 139, 156, 159, 161, 162, 169A, 169B, 171, 173, 175, 179, 185, 186, 188, 189, 193, 194, 195, 200, 201, 203, 205, 208C, 211, 212, 214 and 215 of Exhibit 1

of these findings had or have executed contracts with the defendant United States of America, for adjustment of water rights appurtenant to said above numbered and described parcels of lands set forth in this finding between Friant Dam and the vicinity of Gravelly Ford, which said contracts contain, among others, the following provisions or "provisions substantially similar", affecting the water rights of the owners of said parcels of land in and to the waters of said San Joaquin River.

Provision One

United States Control of the River

8. The United States may so construct, control, operate, utilize, and maintain Friant Dam and any other dam or dams or works whatsoever as to interfere with, direct, and/or control the flow of the River, its tributaries, branch channels, and sloughs, as the United States may at any time and from time to time determine and likewise use and/or divert within or without the watershed of the River and change the place or places of use, and/or change the point or points of diversion and/or the purpose or purposes of use of any of the water of the River at any time and from time to time as it may determine, except only as stated in the next succeeding Article hereof, and except as in this contract [3344] stated, the Contracting Owners, jointly and severally, fully and in all respects release the United States, its officers, agents, and employees from all claims for taking and utilizing the rights, privileges and easements in this

contract referred to, whether such claims have heretofore accrued or may hereafter accrue.

Provision Two

Provision for Live Stream

9. The United States recognizes that the Contracting Owners have certain rights to the use of water from, or influenced by, the River on or in connection with said land, either by appropriation, or by prescription, or as owners of land overlying an underground water supply whether from an underground stream or from percolating water, or as owners of land riparian to the River, or otherwise, and in full satisfaction of said water rights howsoever acquired, claimed, or enjoyed the United States will permit water to pass by or through Friant Dam into the River, which water, together with accretions to the River from all sources whatsoever, will maintain a live stream in the River at the control point hereinafter defined.

Provision Three

How Owner May Divert Water

11. The United States does not and will not, so far as it and its successors and assigns are concerned, object to any reasonable beneficial use of the water of the River for irrigation and or domestic purposes exclusively upon the said land, provided that water to supply such beneficial use or uses shall be taken only from water in the River at a point or at points upon, adjacent to, or opposite said land, or at a point or at points upon said land from underground sources.

Provision Four

No Water or Water Rights to Be Sold by Contracting Owner

15. The Contracting Owners shall not sell, or attempt to sell or convey any water or water rights, or interest therein, from any source whatever, claimed to be parcel of or attached or appurtenant to or for use upon the hereinafter described land or any part thereof, for use elsewhere or upon other land, and any such attempted sale or conveyance shall be void.

Provision Five

Definition of Terms

20. (b) "Live stream": any stream of water of [3345] not less than five (5) cubic feet of water per second, flowing by force of gravity in an open channel.

(c) "Control point": a point in any channel of the river where a live stream, as herein defined, is at any time flowing or would most likely flow, where such channel intersects the most boundary line of the said land extended.

The "control point" is a point on the River near the land involved and is generally at the point where the down-stream boundary of the land involved would intersect the River if such boundary was extended to the River.

In addition to the above provisions some of the above mentioned contracts provide for cash con-

sideration for the execution of said contracts, further consideration in the form of drilling specified wells, some temporary channelization work in the channel of said San Joaquin River and consent to the use of the water of the river for gravel operations by the owners of certain parcels[1] none of which provisions in this paragraph of this finding materially affect the waiver or estoppel of the owners of said parcels of lands hereinafter and in this finding more particularly set forth and described to object to the said storage and diversion of waters at Friant Dam by said defendants.

The court finds that by reason of the execution of the contracts by the owners of the above described parcels of land containing the above provisions, that the owners of said parcels of land enumerated in this finding have waived their rights to object to and are estopped from objecting to the storage of waters back of Friant Dam and said diversion of said waters of said San Joaquin River at Friant Dam by means of the Friant-Madera Canal and by means of the Friant-Kern Canal by defendant United States of America and defendant [3346] Bureau officials and employees, except as the defendant United States of America and defendant Bureau officials and employees are limited by the foregoing provisions of said hereinabove mentioned contracts between the owners or former owners of the parcels of land hereinbefore set forth

[1] Parcels 1, 2, 9, 13, 15 and 120 (Defendants' Ex. A-48-A).

in this finding and the defendant United States of America.

Finding 19. The court finds that that portion of the following numbered parcels of lands (including the lands of the named plaintiffs hereinbefore and in these findings more particularly described in Findings 1 to 16 inclusive), lying within the dashed line (----) of Exhibit 1 of these findings, which said dashed line (----) is more particularly described in Exhibit 2 of these findings (and which said Exhibit 2 is hereby expressly made a part of these findings) at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, did and now do abut and border upon said San Joaquin River and were at the time of the filing of plaintiffs' complaint, at all times mentioned in plaintiffs' complaint as amended and supplemented and now are riparian to said San Joaquin River and that said lands and the owners of said lands within said dashed line (----) are and were at the time of the filing of the above entitled action, at all times mentioned in plaintiffs' complaint, as amended and supplemented, and now are entitled to pump, take and divert waters of said San Joaquin River and use the same on the respective parcels of said lands within said dashed line (----) of Exhibit 1 hereof by reasonable methods of diversion for present and future beneficial uses upon said lands, as reasonable methods of diversion and beneficial use are hereinafter defined in these findings. Said parcels of land hereinbefore in this said

finding mentioned are more [3347] particularly described and designated on said Exhibit 1 of these findings by the following parcel numbers:

3A, 3B, 4, 7, 8, 12, 14, 20, 22, 23, 26, 27, 28, 29, 30, 35, 40, 41A, 41B, 41C, 42, 48, 49, 50A, 50B, 51, 59, 63, 68, 70, 71, 72, 82, 83A, 83B, 87, 88, 97A, 97B, 100, 101, 106, 131, 140, 145, 147, 149, 150, 152, 153, 157, 160, 168, 208B, 208E and 208F.

37, 39, 44B, 46A, 46B, 55, 58, 60, 62A, 62B, 80, 86A, 86B, 86C, 89, 91, 93, 94, 95, 96, 98A, 98B, 98C, 99A, 99C, 105, 107, 110, 111, 112, 116, 117, 119, 124, 142, 166, 170A, 170B, 174, 180, 184, 196, 208A, 208D, 208G and 213.

The court further finds that the dashed line (----) hereinabove set forth is the same as the dotted line on Plaintiffs' Exhibit 29.

Finding 20. The court expressly incorporates and makes Exhibit 3 of these findings a part of these findings and further finds that the exterior boundaries heretofore and in this finding above described, constitute the "Lee Line" referred to in the Opinion of this court in the above entitled matter dated February 7, 1956, as supplemented by Supplemental Memorandum After Hearing dated the 11th day of July, 1956, which said Opinion and Supplemental Memorandum After Hearing are hereinafter set forth, contained and expressly made a part of these findings.

Finding 21. The court finds that all of the lands including those lying within the said boundaries

of Exhibit 3 of these findings (The Lee Line), have overlying rights, analogous to riparian rights, in and to the underground percolating waters underlying said lands, as such underground water was supplied and replenished by the full natural flow of the San Joaquin River prior to any impoundment and diversion thereof at Friant dam, all as set forth more fully in the [2348] Opinion of this court annexed hereto and made a part hereof, and that the owners of said overlying lands (except where such rights have been withheld or limited by reservation in deed, contract or other document) are entitled to pump said percolating underground waters resulting from the full natural flow of said river underlying said lands by means of wells located on said lands and use them on said overlying lands (within the boundaries of Exhibit 3 of these findings) by reasonable methods of diversion for beneficial uses, as reasonable methods of diversion and beneficial use are defined in these findings, that said overlying rights have priority over the rights of said defendants mentioned in this said paragraph to store, divert and appropriate said waters of said San Joaquin River at Friant Dam and that said percolating waters underlying said lands within the boundaries of said Exhibit 3 of these findings (The Lee Line) were at all times prior to the time said defendants, United States of America and Bureau officials and employees, began the storage of water at Friant Dam, and diversion of the same into the Friant-Madera and Friant-Kern Canals, supplied from a

common source to wit, the San Joaquin River, and were charged, recharged and replenished in whole or in substantial part by percolation from said San Joaquin River, and would continue to be charged, recharged and replenished in whole or substantial part from said San Joaquin River were it not for said storage and diversion of said waters of said San Joaquin River at Friant Dam by defendant United States of America and Bureau officials and employees, as aforesaid, and that the said storage and diversion of said waters of said San Joaquin River by said defendants United States of America and Bureau officials and employees, has greatly reduced the supply of underground percolating waters [3349] underlying said lands within the boundaries of Exhibit 3 (The Lee Line) of these findings, thereby irreparably damaging the owners of said overlying lands within said boundaries of Exhibit 3 (The Lee Line).

Finding 21a. That all of the lands described in Findings 1 through 16 hereof, and Finding 19 hereof as riparian, and all of the lands described in Finding 21 hereof as overlying, and all of the lands described in Findings 1, 5, 6, 7, 8 and 9 hereof as having appropriative and/or prescriptive rights had, and now are and since 1928 have been, entitled to have so much of the full natural flow as said full natural flow is more fully described in the Opinion of this court annexed hereto and not herein again repeated, of the San Joaquin River past Friant as is necessary to satisfy said rights of said lands, present and prospective, for reason-

able and beneficial uses by reasonable methods of diversion and use as reasonable and beneficial uses and reasonable methods of diversion and use are hereinafter set forth; and the impoundment and diversion of water at Friant as practiced since the within suit was filed and as threatened to be continued in the future by the United States and by the defendant officials and employees of the United States has and will result in great and immediate injury to all of said lands and rights and properties, which injury will be irreparable and will be continuous, all as more fully set forth in said Opinion of this court annexed hereto and made a part hereof and not herein again repeated. [3350]

Finding 22. The court finds that the present and past methods of diversion of said surface waters of said San Joaquin River by the owners of the lands set forth and described in the foregoing Findings 1 to 16 inclusive, where the owners of said lands are in these findings found to have riparian, appropriative or prescriptive rights to the surface waters of said river, and by the owners of other lands lying within the dashed line (----) of Exhibit 1 hereof, by pumping or otherwise diverting said San Joaquin River water, and carrying said surface waters of said river by means of ditches, pipes and conduits to said lands described in Findings 1 to 16 inclusive found to have riparian, appropriative or prescriptive rights to the use of the waters of said San Joaquin River and to said other lands lying within said dashed line (----) of Exhibit 1 hereof, is a reasonable method of diver-

sion of said surface waters of said San Joaquin River. The court further finds that the pumping of underground percolating waters from wells located on any of the lands lying within the boundaries of Exhibit 3 of these findings (The Lee Line) and carrying of said pumped water by means of ditches, pipes and conduits onto said lands is a reasonable method of diversion of said underground percolating waters underlying the lands described in Exhibit 3 hereof (The Lee Line). The use of water pumped from lands within the boundaries of Exhibit 3 (The Lee Line) on lands other than the lands from which the said underground percolating waters are pumped, is an appropriative use and not an overlying use of the said underground percolating waters underlying the lands within the boundaries of Exhibit 3 (The Lee Line).

Finding 23. The court finds that the past, present and future use of the following amounts of water for (1) consumptive use, (2) crop [3351] irrigation requirements, (3) farm delivery requirements, (4) effective precipitations, and (5) irrigation efficiency %, within the boundaries of the lands set forth and described in Exhibit 3 hereof (The Lee Line), excepting the lands within Tranquillity Irrigation District, is a beneficial use for agricultural purposes of the water of said San Joaquin River by surface diversion or by pumping underground percolating waters from wells lying within the boundaries of Exhibit 3 of these findings (The Lee Line):

Crop	Consumptive use	Effective Precipitation	Crop Irrigation requirement	Farm Delivery requirement	Irrigation efficiency %
	Acre feet per acre				
Alfalfa	3.42	0.38	3.04	4.05	75
Irrigated pasture	3.75	0.38	3.37	5.20	65
Cotton	2.38	0.38	2.00	2.85	70
Irrigated hay and grain	1.22	0.38	0.84	1.10	75
Truck	2.30	0.38	1.92	2.85	65
Misc. field crops	1.60	0.38	1.22	1.75	70
Deciduous fruit	2.38	0.38	2.00	2.65	75
Citrus & Olives	2.11	0.38	1.73	2.30	75
Grapes	2.53	0.38	2.15	3.10	70
Rice				6.00 to 7.1	

Pre-irrigation by the application of water to land prior to planting is a beneficial use for these crops in addition to the amounts set forth herein.

The court further finds that the terms used in the heading of the above tabulation have the following meanings:

"(a) Consumptive Use is the sum of the volumes of water used by vegetative growth of a given area in transpiration or building of plant tissues, and that evaporated from the adjacent soil. These quantities are considered part of consumptive use regardless of whether the source is from irrigation or rainfall. The sum is normally expressed as acre-inches or acre-feet per acre per year.

"(b) Effective precipitation is that part of the total seasonal precipitation which contributes toward the consumptive use of a crop. Part of the effective portion is used by plant transpiration [3352] during the winter season, the remainder is stored

in the root zone for subsequent use by plants. The portion of precipitation which is considered ineffective is lost by percolation below the root zone, or is evaported from the soil surface during the period of no crop growth.

"(c) Crop Irrigation Requirement is that portion of the consumptive use that must be supplied by irrigation, i.e., the consumptive use minus effective precipitation.

"(d) Irrigation efficiency, which is expressed in percentage, is a measure of that portion of irrigation water delivered to the farm headgate which is utilized as crop irrigation requirement.

"(e) Farm Delivery Requirement is that quantity of water, delivered to the farm headgate, which is required to bring a crop to maturity. It includes crop irrigation requirement and economically unavoidable losses due to application."

The court further finds that any use of water by humans for drinking, bathing, household, household garden uses and for evaporative and refrigerated air conditioning and other domestic uses and for manufacturing and other municipal uses up to an annual average of 339 gallons per person per day, and the use of water without unnecessary waste for drinking or bathing by poultry, cattle and other animals is a beneficial use of either the surface waters of the San Joaquin River or of the underground percolating waters within The Lee Line as more particularly described in Exhibit 3 of these findings.

The court further finds that in extremely dry

years, or years of little rainfall, or due to the loose, porous, sandy or gravel conditions, all or some portions of said land lying within the boundaries described in Exhibit 3 of these findings (The Lee Line) the use of water for irrigation, domestic, municipal and agricultural uses in excess of the amounts heretofore found to be a beneficial use in this finding, may also constitute a beneficial use of [3353] the waters of said San Joaquin River or of the underground percolating waters within the boundaries of Exhibit 3 of these findings (The Lee Line). The court's jurisdiction to change amounts of beneficial use in special cases is retained.

Finding 24. The court finds that "'a cubic foot per second', also called a 'second-foot', is the rate of discharge flowing in a channel of a rectangular cross-section one foot wide and one foot deep at an average velocity of one foot per second. Water flowing at the rate of one cubic foot per second for 24 hours will produce a volume of water equal to approximately 2 feet in depth covering one acre, or two acre-feet."

Finding 25. The court finds that the full natural flow of the San Joaquin River past Friant, as such full natural flow is described in the Opinion annexed hereto, is necessary to satisfy the rights to water of the plaintiffs and the members of their class, as such rights are described and the lands in connection therewith in Findings numbered 1 to 16 inclusive, 19, and 21 hereof, unless and until a physical solution as hereinafter described is con-

structed by the defendants; that such physical solution will permit said water rights to be fulfilled and satisfied by a small percentage of the total full natural flow of the San Joaquin River, and will release for other reasonable and beneficial uses by reasonable methods of diversion the greater portion of the full natural flow of the San Joaquin River. Reference is made to the annexed Opinion for further discussion concerning said physical solution.

The court further finds that the plaintiffs and the members of their class, as herein elsewhere described, are entitled to a judgment of injunction enjoining and restraining the United States of America and the defendant officials [3354] and employees of the United States of America from impounding or diverting any of the waters of the San Joaquin River at Friant unless and until the physical solution as hereinafter described is erected and constructed and operated in the manner hereinafter described by the United States of America and by the defendant officials and employees of the United States of America.

Such physical solution shall consist of a series of ten ponds in the natural channel of the San Joaquin River between Friant Dam and Mendota Pool to be created by construction of ten check dams with collapsible gates, said dams to be approximately locationed as follows:

Check Dam No. 1: Left abutment bearing South 14° 0′ West from NE corner (projected NE cor-

ner), Section 35, Township 11 South, Range 20 East, MDB&M, a distance of 2,480 feet.

Check Dam No. 2: Left abutment bearing North 50° 0′ East from SW corner, Section 2, Township 12 South, Range 20 East, MDB&M, a distance of 2,750 feet.

Check Dam No. 3: Left abutment bearing South 42° 30′ West from NE corner, Section 21, Township 12 South, Range 20 East, MDB&M, a distance of 710 feet.

Check Dam No. 4: Left abutment bearing North 54° 30′ [3355] West from SE corner, Section 29, Township 12 South, Range 20 East, M.D.B.&M., a distance of 3,670 feet.

Check Dam No. 5: Left abutment bearing South 3° 0′ East from NW corner, Section 30, Township 12 South, Range 20 East, M.D.B.&M., a distance of 2,600 feet.

Check Dam No. 7: Right abutment bearing South 53° 45′ West from NE corner, Section 32 North, Township 12 South, Range 19 East, M.D.B.&M., a distance of 3,440 feet.

Check Dam No. 9: Left abutment bearing North 16° 35′ East from SW corner, Section 3, Township 13 South, Range 18 East, M.D.B.&M., a distance of 1,820 feet.

Check Dam No. 10: Right abutment bearing South 64° 15′ West from NE corner, Section 8, Township 13 South, Range 18 East, M.D.B.&M., a distance of 5,300 feet.

Check Dam No. 11: Left abutment bearing North 79° 31′ West from SE corner of Section 2, Town-

ship 13 South, Range 17 East, M.D.B.&M., a distance of 1,860 feet.

Check Dam No. 12: Left abutment bearing North 28° 30' East from SW corner, Section 9, Township 13 South, Range 17 East, M.D.B.&M., a distance of 960 feet.

Said dams shall be capable respectively of maintaining water levels in the San Joaquin River when gates are raised at the following minimum depts above existing natural stream bed at the dam, and of ponding the water in San Joaquin River to at least the following distances upstream from said dams: [3356]

Check Dam	*Minimum Depth of* Water at Dam Feet	*Minimum Distance* Ponded Upstream Miles
1	3.0	1.3
2	3.6	1.2
2	3.5	2.3
4	6.0	2.0
5	6.0	2.0
7	9.0	3.0
9	7.0	3.6
10	5.5	2.7
11	5.0	2.6
12	5.5	3.1

Capacity of overflow section of all dams with gates raised shall be 750 second feet. Capacity of overflow section with gates of overflow section down shall be 2,000 second feet minimum. When all gates are down, said dams shall be capable of passing all future flood releases from Friant Dam and scour-

ing releases from Friant Dam of 2,000 to 4,000 second feet with full scouring coverage of the entire bed and banks of ponded areas in the natural bed of the San Joaquin River.

All check dams shall be designed and constructed with treated wooden collapsible gates, concrete deck and abutments, foundation type, and operating equipment including traveling Gantry Cranes to raise and lower said collapsible dams of the type shown on Exhibit 4 of these findings.

In "Typical Upstream Elevation" as shown on Exhibit 4 of these findings, the abutment at the left bank of the river at Check Dams 1, 2, 3, 4, 7, 9, 10 and 11, and at right bank at Check Dams 5 and 12, shall be built in steps so as to permit laying of rails to support Gantry Crane when being taken out of service.

Steel frame Gantry Cranes shall be provided for raising and lowering all collapsible gates. Crane to have [3357] sufficient clearance between its tracks and top of gates and walls and tops of abutment steps adjacent to non-overflow section of dams, or to abutment on which Gantry is to be stationed during flood flows. (Gantry Crane to be stationed at left abutment at Check Dams 1, 2, 3, 4, 7, 9, 10 and 11 and right abutment at Check Dams 5 and 12.)

Rails shall be extended on incline from deck of dam to top of abutments mentioned above.

To provide flexibility, the reinforced concrete deck for all dams is to be laid in panels of appro-

priate width, with joints running up and down stream.

Gantry Cranes are to be self-propelling with gasoline engine power unit of the general type shown on Exhibit 4. They are to be supported on wheels which will run on 40 pound rails. Rails to be placed on concrete deck of each dam and abutment as directed above. Gantry Cranes of the general type shown on Exhibit 4 of these findings shall be individually designed for dams 5, 7, 9, 10, 11 and 12, and for Dams 1 to 4 inclusive. Wider collapsible gates and the raising of the same by hydraulic jacks controlled from the bank, provided they perform the same functions as the Gantry Cranes and gates herein and in this finding set forth and described, may be substituted for the the Gantry Cranes and gates herein and in this finding described.

The water depths of said release at all points along the river from Friant Dam to Check Dam No. 12, and including all appurtenances, shall be capable of safely passing flood discharges expected to occur in the future in the San Joaquin River below Friant Dam.

Said collapsible gates of all dams shall be kept raised at all times during the year to pond position and [3358] sufficient water released from Friant Dam at all times during the year to pond the water back of all dams to the distances hereinbefore set forth in this finding, with the constant minimum flow of five (5) second feet flowing over the last dam downstream from Friant Dam (i.e.,

Check Dam No. 12) except during (1) flood flows, (2) scouring releases or (3) when releases for any other purposes are to be made in excess of 750 second feet, with right of defendants to construct dams or Gantry Cranes of more permanent, elaborate or costly types, provided such dams or cranes perform the same functions as the dams of type shown on Exhibit 4 of these findings, and that the substituted dams will safely pass, when raised, the minimum amounts hereinbefore in this finding set forth, will safely pass all flood discharges, and which will allow passage of the scouring releases in this finding mentioned to cover the entire bed and banks of ponds.

Location of said check dams may be constructed short distances downstream if defendants so desire, provided that the depth of ponded water at the herein designated location for each of said check dams and the minimum ponded distance upstream from said locations herein given, remain approximately the same.

In the event the river bottom has degraded at the location of any dam since the survey of the profile of the river shown on Exhibit 4 of these findings it shall be the duty of the defendants to erect the dam to sufficient height so as to pond the water to a depth hereinabove mentioned at the damsite equal to what the water would have been ponded had the river bottom not degraded since the time of the survey shown on Exhibit 4 of these findings. [3359]

Exhibit 4 consists of two pages of photo offset

reproductions which are expressly made a part of these findings.

The gates to said dams shall be lowered by defendant United States of America and defendant Bureau officials and employees and flushing or scouring releases of at least 4,000 second feet for up to 24 hours for each flushing shall be released by defendant United States and defendant Bureau officials and employees from Friant Dam in June and August of each year and an additional 24-hour flushing release of at least 2,000 second feet on April 1st of years of subnormal run-off as determined by the Bureau of Reclamation's spring estimates in order to keep the river bottom and banks free of accumulated silt, fines, algae and organic seal and force additional waters into the underground. Whenever said river bottom and banks are free of or are freed from said accumulated silt, fines, algae and organic seal, said minimum flushing releases may be stopped.

All costs of constructing, repairing, replacing and operating said collapsible dams and appurtenances including easement and rights of way, and furnishing of water for said ponds shall be borne by the defendant United States of America and defendant Districts.

Finding 26. The court finds that since the first diversion of water of the San Joaquin River by the defendant United States of America and defendant Bureau officials and employees, at and by means of the impoundment and diversion of water at Friant Dam, up to the close of the hearings

in the above entitled action, the water level of the underground percolating waters within the boundaries of Exhibit 3 (The Lee Line) has dropped substantially—in some places a drop of 100 feet in the last five years having occurred—which drop was substantially caused by the impoundment and diversion of the water of the San Joaquin River at Friant by the defendant United States [3360] and the defendant officials and employees of the United States, and which drop has caused great and irreparable injury to all of said lands, and said lowering of the water levels under said lands as a result of the impoundment and diversion at Friant as practiced and threatened by the defendant United States and defendant officials and employees of the United States will continue at a greatly increased rate so as to cause the abandonment of many wells resulting in the failure of approximately 200,000 acres of said lands to receive sufficient water to continue the irrigated crop and orchard pattern to which they have been devoted for many years last past, and to ultimately compel the abandonment of more than 100,000 acres of said land as farm land, unless the full natural flow of said river flows past Friant, or unless the physical solution herein provided is promptly constructed and operated. [3361]

Finding 27. The court finds that the named plaintiffs mentioned in Findings 1 to 16 of these findings of fact (with the exception of the named plaintiff mentioned in Finding 15 hereof) and other named plaintiffs adequately represent as a class

those other landowners not named parties to this action owning lands in these findings found to have overlying percolating water rights within the boundaries set forth and described in Finding 21 of these findings (Exhibit 3—The Lee Line) and that said named plaintiffs (with the exception of the named plaintiff mentioned in Finding 15 hereof) adequately represent as a class those other landowners (not named parties to this suit) in these findings found to own lands riparian to said San Joaquin River as described in Finding 19 hereof and that said named plaintiffs (with the exception of the named plaintiff mentioned in Finding 15 hereof) adequately represent those other landowners (not named parties to this action) in these findings found to have prescriptive and/or appropriative rights in and to the surface waters of said San Joaquin River. [3362]

Finding 28. The court finds that plaintiffs and the members of their class, as herein defined, would be and are irreparably damaged by changing the points at which diversion of waters were made by Miller & Lux, Inc., and its subsidiaries and affiliates, downstream from Gravelly Ford to Friant Dam as presently practiced and threatened to be continued by defendant United States of America and defendant officers, agents and employees of the United States of America. That such irreparable injury consists of the inability to secure water directly from the San Joaquin River and the reduction in the water level in wells as

herein elsewhere and in the annexed Opinion set forth.

The court further finds that such irreparable injury will continue and will increase unless and until the plan of physical solution herein provided is erected, constructed and operated.

Finding 28a. The court finds that all lands within the boundaries of the said "Lee Line" and the boundaries of the Defendant Chowchilla Water District and the Defendant Madera Irrigation District are located in the water shed of the San Joaquin River or an area immediately adjacent thereto, and within the counties of origin, to wit: Madera County and Fresno County, in which the waters of the San Joaquin River originate, within the meaning of Sections 11460, 11463 and 10505 of the California Water Code. [3363]

Findings of Fact in Complaint in Intervention of Tranquillity Irrigation District

This action having been tried by the court without a jury, the court hereby makes its findings of fact and conclusions of law:

Findings of Fact

Finding 1. The Opinion of the above entitled court heretofore filed in the above entitled action and dated the 7th day of February, 1956, and the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956, together with Exhibits 1 to 5 inclusive, are hereby expressly annexed and made a part of these findings. All findings of

fact stated therein are hereby found to be findings of fact of these said findings in Tranquillity Irrigation District's Complaint in Intervention unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific finding shall be deemed the finding of this court. Said Opinion and Supplemental Memorandum After Hearing immediately precede Exhibit 1 of these findings.

Finding 2. The court reincorporates and expressly makes a part of these findings of fact the Findings of Fact 20 and 26 inclusive of plaintiffs' complaint on file in the above entitled action as amended and supplemented.

Finding 3. The court finds that Tranquillity Irrigation District and its landowners, by virtue of either riparian, prescriptive and contractual rights, are entitled to 12% in excess of 1360 second feet of the natural flow of the San Joaquin River measured at White House for use of lands within said District, computed as follows: [3364]

(a) Said 12% over 1360 second feet at White House hereinabove and in this finding mentioned, is based upon the adjusted flow of the San Joaquin River at Friant, which is the flow which would have occurred if there had been no storage back of Friant Dam and no storage behind any other dams upstream from Friant Dam on said river or any tributary thereof.

(b) The adjusted river flow for any day at Friant shall be computed by first adding the evaporation from the lake surface, the release to the

San Joaquin River, the release to the Friant-Madera Canal and the release to the Friant-Kern Canal and adding to said sum the increase in storage at Millerton Lake or subtracting from said sum the decrease in storage at Millerton Lake, all expressed in cubic feet per second, the result representing inflow into Millerton Lake. To this inflow should be added the increase in storage of Kerckhoff Reservoir of the Pacific Gas & Electric Company, Dam No. 7 of Southern California Edison Co., and in all existing or future upstream reservoirs of Southern California Edison Co. on said San Joaquin Rivers and its tributaries and from this should be deducted the decrease in storage in Kerckhoff Reservoir, Dam No. 7 of said Southern California Edison Co., and of said existing and future upstream reservoirs of Southern California Edison Co. on said San Joaquin River or any of its tributaries, all expressed in cubic feet per second. This shall constitute the adjusted river flow at (below) Friant Dam. [3365]

(c) The computed daily natural inflow into Mendota Pool measured at White House in excess of 1360 cubic feet per second shall then be obtained by subtracting from the adjusted flow at Friant the intervening canal and ditch diversions from the San Joaquin River which would have been made by Gravelly Ford Canal, Aliso Canal, Edison Securities Co., Chowchilla Canal, Columbia Canal and Lone Willow grass rights if these diversions were being made. There shall also be subtracted "River Loss and Riparian Diversions" as

determined by subtracting from the measured actual flow released at Friant, the measured actual flow at White House for the day being considered corrected for delay in river flow referred to in paragraph 4 of this finding.

The schedule for determining intervening canal and ditch diversions during each month of the year shall be that contained on pages 26 to 37 inclusive of Report No. 3 of the State of California "Definitions of Rights to the Waters of San Joaquin River Proposed for Diversion to Upper San Joaquin Valley dated August, 1936", which said pages 26 to 37 inclusive of Report No. 3 are set forth as Exhibit 5 of these findings and expressly made a part thereof.

(d) 12% of the flow into Mendota Pool as computed above in excess of 1360 cubic feet per second shall then be taken as the amount which Tranquility Irrigation District and its landowners shall be entitled to divert from Fresno Slough. The date of availability of this water shall be two days later than the date of adjusted river flow at Friant as [3366] hereinabove mentioned in order to correct for delay in river flow between Friant and Mendota Pool.

(e) On days between October 1st and April 15th, when the natural flow of the San Joaquin River measured at White House, as herein computed, is less than 1500 cubic feet per second and between April 16th and September 30th when the natural flow of said river is less than 3000 cubic feet per

second measured at White House and Southern California Edison Co. with the consent of Miller & Lux, Inc., is storing water of Stevenson Creek in Shaver Lake, or at any time when the natural flow of the San Joaquin River measured at White House is less than 3000 cubic feet per second Southern California Edison Co. with the consent of Miller & Lux, Inc., is storing any of the water of said river or tributary thereof in any reservoir or said San Joaquin River or its tributaries, Tranquillity Irrigation District shall be entitled to pump 100 cubic feet per second from Fresno Slough or 12% in excess of 1360 cubic feet per second of the natural flow of the San Joaquin River measured at White House as said natural flow is in this finding hereinbefore computed, whichever is the greater.

(f) No deductions from said 12% of said flow of said river above 1360 second feet as herein determined shall be made on account of any flow of the Kings River whether measured at points on Fresno Slough or any other place.

(g) The right of Tranquillity Irrigation District to said 12% of 1360 second feet of the natural [3367] flow of said river as hereinabove computed shall not be limited by present or future pumping capacity of the Tranquillity Irrigation District from Fresno Slough but shall only be limited by the requirement that said 12% of said waters of said river be used now and in the future for beneficial uses and purposes within said district and

by reasonable methods of diversion as beneficial use and reasonable methods of diversion hereinbefore and in these findings are defined.

Finding 4. As a physical solution for Tranquillity Irrigation District only defendants may, without charge to Tranquillity Irrigation District, substitute water from the Delta Mendota Canal of equal quality to the natural flow of the San Joaquin River as described in finding 3 page 54 hereof, for the said natural flow of said San Joaquin River and Tranquillity Irrigation District shall have the option to pump without charge an equal amount of waters originating from the Delta Mendota Canal from Fresno Slough in lieu of the said natural flow of said San Joaquin River.

Finding 5. The court finds that all lands within the boundaries of Tranquillity Irrigation District are located in the watershed of the San Joaquin River or an area immediately adjacent thereto and within the county, to-wit: Fresno County, in which the waters of the San Joaquin River originate within the meaning of Sections 11460, 11463 and 10505 of the California Water Code.

Finding 6. The court finds that the same physical solution set forth and described in Finding 25 of plaintiffs' complaint, as amended and supplemented, in the above entitled action, should be decreed under Tranquillity Irrigation District's Complaint in Intervention, as amended and Supplemented, in order to replenish and supply the underground percolating waters underlying said

[3368] Tranquillity Irrigation District within the boundaries of Exhibit 3 of these findings. (The Lee Line.)

Finding 7. The court declares and decrees that the use of the following amounts of water for (1) consumptive use, (2) crop irrigation requirements, (3) farm delivery requirements, (4) effective precipitation, and (5) irrigation efficiency, within the boundaries of Tranquillity Irrigation District either by surface diversion of water from Fresno Slough (whether originating from said San Joaquin River, or elsewhere) or by pumping underground percolating waters from wells lying within the boundaries of Tranquillity Irrigation District is a beneficial use of the water.

Crop	Consumptive use	Effective Precipitation	Crop Irrigation requirement	Farm Delivery requirement	Irrigation efficiency %
	Acre feet per acre			(a)	
Alfalfa	2.8	0.2	2.6	3.3	80
Irrigated pasture	3.7	0.2	3.5	4.4	80
Cotton (b)	2.4	0	2.4	3.0	80
Irrigated hay and grain (b)	1.2	0.2	1.0	1.25	80
Misc. field crops and truck	2.0	0	2.0	2.5	80
Rice	5.0	0	5.0	7.1	70
Sugar Beets	2.4	0	2.4	3.0	80

(a) To these values should be added transmission losses in canal system.

(b) Pre-irrigation by the application of water to land prior to planting is a beneficial use for this crop in addition to the amounts set forth.

Findings of Fact in Complaint in Intervention of City of Fresno

This action having been tried by the court without a jury, the court hereby makes its findings of fact and conclusions of law: [3369]

Finding 1. The Opinion of the above entitled court heretofore filed in the above entitled action and dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956 and Exhibits 1 to 5 are hereby expressly annexed and made a part of these findings. All findings of fact stated therein are hereby found to be findings of fact in these said findings in City of Fresno's Complaint in Intervention, as amended and supplemented, unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific finding shall be deemed the finding of this court. Said Opinion and Supplemental Memorandum After Hearing immediately precede Exhibit 1 of these findings.

Finding 2. The court reincorporates and expressly makes a part of these findings of fact the Findings of Fact 20 to 26 inclusive of plaintiff's complaint on file in the above entitled action as amended and supplemented.

Finding 3. The court finds that the total safe yield from the wells of the City of Fresno is 30,000 acre feet per year but that said City of Fresno is now pumping in excess of 45,000 acre feet of water per year throughout its municipal water system.

Finding 4. The court finds that eight wells of the City of Fresno are located within the boundaries of Exhibit 3 (The Lee Line). [3370]

Findings of Fact In Complaint In Intervention of State of California

This action having been tried by the court without a jury, the court hereby makes its findings of fact and conclusions of law:

Findings of Fact

Finding 1. The Opinion of the above entitled court hertofore filed in the above entitled action and dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956 and Exhibits 1 to 5 are hereby expressly annexed and made a part of these findings. All findings of fact stated therein are hereby found to be findings of fact in these said findings in State of California's Complaint in Intervention, as amended and supplemented, unless specifically contrary to specific findings of fact otherwise herein contained in which case the specific finding shall be deemed the finding of this court. Said Opinion and Supplemental Memorandum After Hearing immediately precede Exhibit 1 of these findings.

Finding 2. The court reincorporates and expressly makes a part of these findings of fact the Findings of Fact 20 to 26 inclusive of plaintiff's complaint on file in the above entitled action as amended and supplemented.

Conclusions of Law As to Plaintiffs and Their Class

The Opinion of the above entitled court heretofore filed in the above entitled action and dated the 7th day of February, 1956, the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956, and Exhibits 1 to 5 inclusive of the Findings of Fact herein are hereby expressly annexed and made a part of [3371] these Conclusions of Law.

Any finding of fact stated in the conclusions of law are nevertheless hereby found to be a finding of fact, even though stated in the conclusions of law.

Any statements or conclusions of law, even though stated in the findings of fact, are nevertheless hereby found to be conclusions of law.

That the defendant United States of America, its officers, agents, attorneys and employees, including the defendants Spencer, Blote and Sullivan, and their successors in office and employment should be forever enjoined from storing or diverting the natural flow of said San Joaquin River at or by means of Friant Dam provided, however, that if said defendants and said defendant irrigation and water district, at their sole cost and expense, within a reasonable time, construct, place in operation, maintain and operate the physical solution set forth and described in Finding of Fact No. 25, and in addition thereto, said defendant United States and its officers, agents, attorneys and employees continuously allow that portion of the natural flow of the

San Joaquin River to enter Mendota Pool in the amounts and the manner set forth in Finding No. 3 of Findings of Fact on Complaint in Intervention of Tranquillity Irrigation District and continuously allow said Tranquillity Irrigation District to take and divert the natural flow of the San Joaquin River measured at Mendota Pool as provided in said Finding No. 3 of the Complaint in Intervention of Tranquillity Irrigation District and continuously allow said Tranquillity Irrigation District to take and divert the natural flow of the San Joaquin River measured at Mendota Pool as provided in said Finding of Fact No. 3 of said Complaint in Intervention of the Tranquillity Irrigation District or in lieu thereof to take an equal amount of substituted water originating from the Delta Mendota Canal as provided in Finding No. 4 of said Complaint in [3372] Intervention of Tranquillity Irrigation District then said injunction shall not go into effect.

All other conclusions of law expressed in said Opinion in the above entitled action dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing dated the 11th day of July, 1956, are hereby adopted as the conclusions of law of this court under plaintiffs' complaint, as amended and supplemented.

Conclusions of Law In Complaint In Intervention of Tranquillity Irrigation District

The Opinion of the above entitled court heretofore filed in the above entitled action and dated the

7th day of February, 1956, the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956 and Exhibits 1 to 5 inclusive of the Findings of Fact in this Complaint in Intervention, as amended and supplemented are hereby expressly annexed and made a part of these conclusions of law.

Any finding of fact stated in the conclusions of law are nevertheless hereby found to be a finding of fact, even though stated in the conclusions of law.

Any statements or conclusions of law, even though stated in the findings of fact, are nevertheless hereby found to be conclusions of law.

That the defendant United States of America, its officers, agents, attorneys and employees, including the defendants Spencer, Blote and Sullivan, and their successors in office and employment should be forever enjoined from storing or diverting the natural flow of said San Joaquin River at or by means of Friant Dam provided, however, that if said defendants and said defendant [3373] irrigation and water districts within a reasonable time, at their sole cost and expense, construct, place in operation, maintain and operate the physical solution set forth and described in Finding of Fact No. 25, and in addition thereto, said defendant United States and its officers, agents, attorneys and employees continuously allow that portion of the natural flow of the San Joaquin River to enter Mendota Pool in the amounts and the manner set forth in Finding No. 3 of Findings of Fact of Complaint in Intervention of Tranquillity Irrigation Dis-

trict and continuously allow said Tranquillity Irrigation District to take and divert the natural flow of the San Joaquin River measured at Mendota Pool as provided in said Finding of the Complaint in Intervention of Tranquillity Irrigation District and continuously allow said Tranquillity Irrigation District to take and divert the natural flow of the San Joaquin River measured at Mendota Pool as provided in said Finding of Fact No. 3 of said Complaint in Intervention of the Tranquillity Irrigation District or in lieu thereof to take an equal amount of substituted water originating from the Delta Mendota Canal as provided in Finding No. 4 of said Complaint in Intervention of Tranquillity Irrigation District then said injunction shall not go into effect.

The other conclusions of law expressed in said Opinion in the above entitled action dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing dated the 11th day of July, 1956, are hereby adopted as the conclusions of law of this court under Tranquillity Irrigation District's Complaint in Intervention, as amended and supplemented.

Conclusions of Law In Complaint In Intervention of City of Fresno

The Opinion of the above entitled court heretofore filed [3374] in the above entitled action and dated the 7th day of February, 1956, the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956 and Exhibits 1 to 5 inclusive of

the Findings of Fact in this Complaint in Intervention, as amended and supplemented, are hereby expressly annexed and made a part of these conclusions of law.

Any finding of fact stated in the conclusions of law are nevertheless hereby found to be a finding of fact, even though stated in the conclusions of law.

Any statements or conclusions of law, even though stated in the findings of fact, are nevertheless hereby found to be conclusions of law.

That the defendant United States of America, its officers, agents, attorneys and employees, including the defendants Spencer, Blote and Sullivan, and their successors in office and employment should be forever enjoined from storing or diverting the natural flow of said San Joaquin River at or by means of Friant Dam provided, however, that if said defendants and said defendant irrigation and water districts, within a reasonable time, at their sole cost and expense, construct, place in operation, maintain and operate the physical solution set forth and described in Finding of Fact No. 25, and in addition thereto, said defendant United States and its officers, agents, attorneys and employees continuously allow that portion of the natural flow of the San Joaquin River to enter Mendota Pool in the amounts and the manner set forth in Finding No. 3 of Findings of Fact of Complaint in Intervention of Tranquillity Irrigation District and continuously allow said Tranquillity Irrigation District to take and divert the natural flow of the San Joaquin River measured at Mendota Pool as provided in

said Finding of Fact No. 3 of said Complaint in Intervention of the Tranquillity Irrigation District or in lieu thereof to take an equal amount of substituted water [3375] originating from the Delta Mendota Canal as provided in Finding No. 4 of said Complaint in Intervention of Tranquillity Irrigation District then said injunction shall not go into effect.

The other conclusions of law expressed in said Opinion in the above entitled action dated the 7th day of February, 1956 and the Supplemental Memorandum After Hearing dated the 11th day of July, 1956, including the City's right to a declaratory judgment and injunctive relief as set forth in said decision and Supplemental Memorandum After Hearing, are hereby adopted as conclusions of law of the City of Fresno's Complaint in Intervention, as amended and supplemented.

Conclusions of Law In Complaint In Intervention of State of California

The Opinion of the above entitled court heretofore filed in the above entitled action and dated the 7th day of February, 1956, the Supplemental Memorandum After Hearing, dated the 11th day of July, 1956, and Exhibits 1 to 5 inclusive of the Findings of Fact in this Complaint in Intervention, as amended and supplemented, are hereby expressly annexed and made a part of these conclusions of law.

Any finding of fact stated in the conclusions of law are nevertheless hereby found to be a finding

of fact, even though stated in the conclusions of law.

Any statements and conclusions of law, even though stated in the findings of fact, are nevertheless hereby found to be conclusions of law.

The conclusions of law expressed in said Opinion in the above entitled action dated the 7th day of February, 1956 and [3376] the Supplemental Memorandum After Hearing dated the 11th day of July, 1956, including the dismissal of the State of California and dissolution of injunction pendente lite, are hereby adopted as the conclusions of law under plaintiff's complaint, as amended and supplemented.

Let judgment be entered accordingly.

Dated: January 18, 1957.

/s/ PEIRSON M. HALL,
Judge of the U. S. District
Court. [3377]

[Note:

Opinion is set out in 142 F. Supp. 1.

Exhibit 1—"Map of Water Right Investigations" is the same as Defendants' Exhibit A9A-1 except for the crayon markings, set out in the Book of Exhibits.

Exhibit 2—"Description of Certain Lands Riparian to the San Joaquin River" is the same as Exhibit 2 attached to the Amended Judgment.

Exhibit 3—"Legal Description—Topographic Boundary of Alluvial Cone and Minimum Area Within Which Ground-Water Presently or Potentially is Influenced by Flow of San Joaquin River" is the same as Exhibit 3 attached to the Amended Judgment.

Exhibit 4 (page 1)—"Profile of San Joaquin River, Friant to White House Gaging Station Showing Check Dams Constituting the Physical Solution by Court in its Opinion of February 7, 1956 and Supplemental Opinion of July 11, 1956" and (page 2) "Typical Collapsible Check Dams, Types I, II & III, San Joaquin River Between Friant Dam and Mendota Pool" September, 1956, is the same as Exhibit 4 attached to Amended Judgment.

Exhibit 5—"Table 3—Monthly Flow Schedule Allowance of Each Crop and Grass Land Water Right as Related to the Adjusted Flow of San Joaquin River at Friant in Second-Feet" is the same as attached to Amended Judgment.]

Affidavit of Service by Mail Attached.

[Endorsed]: Filed January 18, 1957.

[Title of District Court and Cause.]

JUDGMENT

This action came on to be tried before the above entitled court, without a jury, and the evidence adduced by the parties having been heard, and the court having made its findings of fact and conclusions of law:

It Is Hereby Ordered, Adjudged and Decreed:

1. That plaintiffs Duane M. Folsom and E. Florence Folsom are the owners of the following described land located in the County of Fresno, State of California:

Government Lots 4, 5, 6 and 7, and the S½ of the NE¼ of Section 10, and the NW¼ of Section 11, all in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, in the County of Fresno, State of California; and all lands contiguous thereto to the center of the San Joaquin River.

That all of the said land hereinabove described in paragraph 1 of this judgment is riparian to said San Joaquin River except the following portion of the above described property hereinafter and in this paragraph 1 of this judgment referred to as Exception 1 of paragraph 1 of this judgment:

Exception 1. The NW¼ of Section 11, Township 12 South, Range 20 East, M.D.B.&M., Fresno County.

That plaintiffs Duane M. Folsom and E. Florence Folsom are entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinbefore in this said paragraph 1 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial use and reasonable methods of diversion are hereinafter and in this judgment defined.

That said plaintiffs Duane M. Folsom and E. Florence Folsom have appropriative and prescriptive rights to take, divert and pump from said San Joaquin River up to 1,400 gallons per minute of the surface waters of said San Joaquin [3551] River and use the same for beneficial uses on lands de-

scribed in Exception 1 of this paragraph 1 of this judgment by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

2. That plaintiffs Everett G. Rank and Evelyn Lydia Rank are the owners of the following described land located in the County of Fresno, State of California:

That certain real property located in the County of Fresno, State of California, described as follows:

The W½ of the SW¼ of the SW¼ of Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian according to the United States Government Township Plats.

A portion of Lot 10 of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats, bounded by the south and northwest lines of said Lot 10 and by a line commencing on said south line at a point at that distance from the angle formed by said south line and northwest line which when projected at right angles north to said northwest line includes 2.78 acres, and no more. Also the E½ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River; Except therefrom the following: Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet; thence west 800 feet; thence

south 840 feet and thence east 800 feet to the point of commencement.

That all of said land hereinabove and in paragraph 2 of this judgment is riparian to said San Joaquin River except the following portion of the above described property hereinafter and in this paragraph 2 of this judgment referred to as Exception 1 of paragraph 2 of this judgment:

Exception 1. The W½ of the SW¼ of the SW¼ of Section 1, Township 12 South, Range 20 East, Mount Diablo Base and Meridian according to the United States Government Township Plats.

That plaintiffs Everett G. Rank and Evelyn Lydia Rank are entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinbefore in this said paragraph 2 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial use and reasonable methods of diversion are hereinafter and in this judgment defined.

That plaintiffs Everett G. Rank and Evelyn Lydia Rank, at the time of filing of plaintiffs' complaint, did not have prescriptive or appropriative rights to use the water of said San Joaquin River on the lands described in paragraph 1 of this paragraph 2 of this judgment.

3. That plaintiff Evelyn Lydia Rank is the owner of the following described land located in the County of Fresno, State of California:

That portion of the SE¼ of the SE¼ of Section 2, Township 12 South, Range 20 East, Mount Diablo

Base and Meridian, according to the United States Government Township Plats, described as follows:

Commencing at the southeast corner of the SE¼ of said Section 2; thence north 840 feet, thence west 800 feet; thence south 840 feet and thence east 800 feet to the point of commencement.

That none of said land is riparian to said San Joaquin River nor did said plaintiff Evelyn Lydia Rank, at the time of the filing of plaintiffs' complaint, have any appropriative or prescriptive right to take, divert or pump waters of said San Joaquin River for use upon said lands.

4. That plaintiff Everett G. Rank is the owner of the following described land located in the County of Fresno, State of California:

Lots 5 and 9 in Section 2 and Lot 9 in Section 3, in Township 12 South, Range 20 East, Mount Diablo Base and Meridian, according to the United States Government Township Plats; and all lands contiguous thereto to the center of the San Joaquin River, [3553] which said lands in this paragraph defined and all accretions thereto are commonly known and referred to as "Island No. 1", "Cobbs Island", "Rank Island" and "Elkins Island".

That all of said land hereinabove described in paragraph 4 of this judgment is riparian to said San Joaquin River.

That plaintiff Everett G. Rank is entitled to take, divert and pump now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land in paragraph 4 of this judgment decreed to be riparian, through reasonable

methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

5. That plaintiff J. E. Cobb is the owner of the following described land located in the County of Madera, State of California:

In Section 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, the area described as follows: Beginning at an iron pipe which is S 61° 42′ W. 1131.4 feet from an iron pipe on the north line of said Section 21, which is 674.0 feet easterly from the northwest corner of said Section 21; thence S 61° 42′ W. 268.6 feet to an iron pipe; thence S 50° 14′ W. 667.7 feet to an iron pipe; thence East parallel with and 1088.3 feet south of the north line of said section, a distance of 3148.8 feet, to an iron pipe; thence East to the intersection with the easterly boundary line of Lot 1 of said section; thence following the easterly boundary line of said Lot 1 northeasterly to a point which is 534.9 feet southerly at right angles from the north line of said section; thence West parallel with and 534.9 feet south of the north line of said section to an iron pipe; thence West a distance of 3132.3 feet to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of E½ of Section 9 lying in Madera County and NW¼ of NW¼ and Lots 1 and 2 in Section 10, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

That all of said land hereinabove and in para-

graph 5 of this judgment is riparian to said San Joaquin River except [3554] the following portion of the above described property hereinafter and in this paragraph 5 of this judgment referred to as Exception 1 and Exception 2 of paragraph 5 of this judgment.

Exception 1. Those portions of the real property hereinbefore and in this finding described lying in Section 20, Township 12 South, Range 20 East, M.D.B.&M., Madera County.

Exception 2. The NE¼ of Section 9, Township 12 South, Range 20 East, M.D.B.&M., lying in Madera County.

That said plaintiff J. E. Cobb has a prescriptive right to take, divert and pump from said San Joaquin River up to 1,000 gallons per minute of the surface waters of said San Joaquin River for beneficial uses upon said excepted lands set forth in Exception 1 of this paragraph 5 of this judgment by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

That none of said land described in Exception 2 of this paragraph 5 of this judgment is riparian to said San Joaquin River, nor does the owner thereof have any appropriative or prescriptive right to take, divert or pump waters of said San Joaquin River for use upon said lands described in said Exception 2 of this paragraph 5 of this judgment.

6. That plaintiffs J. E. Cobb and Ruby Cobb are the owners of the following described land located in the County of Madera, State of California:

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian: Southwest one-half of SW¼ and that portion of SE¼ lying W of San Joaquin River; and all lands contiguous thereto to the center of the San Joaquin River; (less 7.58 ac. Highway off W side of SE¼ as said lands are set forth in Vol. 291 of Records, Page 234, Madera County Recorder's Office). [3555]

A parcel of land in Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, described as beginning at an iron pipe which is S 61° 42′ W, 1400 feet from a pipe on N line of Section 21 which is 674 feet Easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning.

That all of said land hereinabove and in paragraph 6 of this judgment is riparian to said San Joaquin River except the following portion of the above described property hereinafter [3556] and in this paragraph 6 of this judgment referred to as Exception 1 and Exception 2 of paragraph 6 of this judgment:

Exception 1. All that portion of the Southeasterly one-half of SW¼ of said Section 16, Township 12 South, Range 20 East, M.D.B. & M.

Exception 2. A parcel of land in Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, described as beginning at an

iron pipe which is S 61° 42′ W, 1400 feet from a pipe on N line of Section 21 which is 674 feet Easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning.

That plaintiffs J. E. Cobb and Ruby Cobb are entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinabove and in this paragraph 6 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

That said plaintiffs J. E. Cobb and Ruby Cobb have a prescriptive right to take, divert and pump from said San Joaquin River and use on the lands described in Exception 1 of this paragraph 6 of this judgment of up to 1025 gallons per minute of the surface waters of said San Joaquin River for beneficial uses and by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

7. That plaintiff Lawrence D. Cobb is the owner of the following described land located in the County of Madera, State of California: [3557]

In Section 17, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 1, 2, 3, 4,

5, 6, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; less 4.84 ac. Co. Rd.

In Section 20, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lots 2, 9, 10 and 15, and all of Lots 1, 7 and 8; and all lands contiguous thereto to the center of the San Joaquin River; Except the area described as follows: A parcel of land in Section 20, Township 12 South, Range 20 East described as beginning at an iron pipe which is S 61° 42′ W, 1400 feet from a pipe on N line of Section 21 which is 674 feet easterly from NW corner of Section 21; thence N 70° 40′ W, 428.6 feet; thence S 71° 32′ W, 192.3 feet; thence S 5° 55′ W, 235.8 feet; thence S 20° 14′ E, 283.1 feet; thence N 50° 14′ E, 667.7 feet to point of beginning.

In Section 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 5; NW 2.32 ac. of NW¼ of NW¼; S 37.45 ac. of Lots 3 and 4; and all lands contiguous thereto to the center of the San Joaquin River.

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, the area described as follows: Commencing at iron pipe which is South 50° 14′ West, 667.7 feet from an iron pipe which is South, 61° 42′ West, 1400 feet from an iron pipe on the North line of Section 21, Township 12 South, Range 20 East, which is 674 feet Easterly from the Northwest corner of said Section 21; thence South 50° 14′ West, 192.3 feet; thence South 35° 31′ West 532.3 feet; thence East

parallel with and 1643.9 feet South of North line of said Section 21 a distance of 3108.7 feet; thence East to the intersection with the Easterly boundary line of Lot 3 of said Section 21; thence northeasterly following the Easterly boundary line of Lots 3 and 1 of said Section 21 to a point which is 1088.3 feet Southerly at right angles from the North line of said Section 21; thence West parallel with and 1088.3 feet South of North line of said Section 21 to an iron pipe; thence West a distance of 3148.8 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River.

That all of said land hereinabove and in paragraph 7 of this judgment is riparian to said San Joaquin River except the following portion of the above described property hereinafter and in this paragraph 7 of this judgment referred to as Exception 1 of paragraph 7 of this judgment: [3558]

Exception 1. In Madera County, all that portion of Lots 1, 2, 7 and 8 in the NE¼ of Section 20, Township 12 South, Range 20 East, M.D.B. & M., according to the United States Government Township Plats, described as follows:

Beginning at an iron pipe which is S 50° 14′ W, 667.7 feet from an iron pipe which is S 61° 42′ W, 1400 feet from an iron pipe on the N line of Section 21, Township 12 South, Range 20 East, which is 674 feet easterly from the NW corner of said Section 21; thence S 50° 14′ W, 192.3 feet; thence S 35° 31′

W, 532.3 feet; thence east parallel with and 1643.9 feet south of the N line of said Section 20, to a point on the E line thereof; thence along said E line, N 555.6 feet, thence west parallel with and 1088.3 feet south of the N line of said Section 20 to the point of beginning.

Said land being the same land as shown on Exhibit 1 hereof lying in the NE¼ of Section 20, Township 12 South, Range 20 East, M.D.B. & M., and within the dotted triangle of Exhibit 1 of these findings.

Exception 2. Section 17, Township 12 South, Range 20 East, M.D.B. & M., Lots 1, 2, 3, 4, 5, 6, 7 and 8.

That plaintiff Lawrence D. Cobb is entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinafter and in paragraph 7 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

That none of said land described in Exception 2 of this paragraph 7 of this judgment is riparian to said San Joaquin River, nor does the owner thereof have any appropriative or prescriptive right to take, divert or pump waters of said San Joaquin River for use upon said lands described in said Exception 2 of this paragraph 7 of this judgment.

That said plaintiff Lawrence D. Cobb has a prescriptive right to take, divert and pump from said

San Joaquin [3559] River and use up to 1,025 gallons per minute of the surface waters of said San Joaquin River upon the lands described in Exception 1 of this paragraph 7 of this judgment for beneficial uses and by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

8. That plaintiff Marjorie Sims is the owner of the following described land located in the County of Fresno, State of California: [3560]

Lot 16, Section 9, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

W½ of SW¼ of NW¼; SW¼ of NW¼ of NW¼, Section 15, Township 12 South, Range 20 East, Mount Diablo Base and Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 7; portion of Lot 6 described as: Commencing at NE corner of said lot; thence S 20 rds; thence W 40 rds; thence S 20 rds; thence W to U.S. Seg. line; thence northwesterly to N line of said lot; thence E to commencement; and all lands contiguous thereto to the center of the San Joaquin River; less S 12 rds. frontage on County Road, running E from SW corner of said tract; also less portions of Lots 6 and 7, lying W of County Road.

In Section 16, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, portion of Government Lots 6 and 7 in NE¼, lying W of road; and all lands contiguous thereto to the center of the San Joaquin River; less any portion lying S of a line drawn 120 rds S of and parallel to N line of Section 16.

That all of the said land hereinabove and in paragraph 8 of this judgment is riparian to said San Joaquin River except the following portion of the above described land hereinafter and in this paragraph 8 of this judgment referred to as Exception 1 of paragraph 8 of this judgment:

Exception 1. W½ of SW¼ of NW¼; SW¼ of NW¼ of NW¼, Section 15, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Fresno County.

That plaintiff Marjorie Sims is entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinafter and in paragraph 8 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined. [3561]

That said plaintiff Marjorie Sims has appropriative and prescriptive rights to take, divert and pump from said San Joaquin River, and use upon said lands described in Exception 1 of this said paragraph 8 of this judgment of up to 1,000 gallons

per minute of the surface waters of said San Joaquin River for beneficial uses and by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

9. That plaintiff Marjorie Sims is the owner of the following described land located in the County of Madera, State of California:

In Sections 20 and 21, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, commencing at an iron pipe on the N line of Section 21 which is 674.0 ft. easterly from the NW corner of said Section 21; thence S 61° 42′ W 1131.4 feet; thence E parallel with and 534.9 feet S of the N line of said Section 21, a distance of 3132.3 feet; thence E to the intersection with the easterly boundary line of Lot 1 of said Section 21; thence Northeasterly following the Easterly boundary line of said Lot 1 to the NE corner of said Lot 1; thence W along the N line of said Section 21 to an iron pipe; thence W a distance of 3094.0 feet to the point of commencement; and all lands contiguous thereto to the center of the San Joaquin River; less 1.48 ac. in Section 21 to the State of California for road purposes.

That all of said land hereinabove and in paragraph 9 of this judgment is riparian to said San Joaquin River except the following portion of the above described land hereinafter and in this paragraph 9 of this judgment referred to as Exception 1 of paragraph 9 of this judgment:

Exception 1. That portion of the lands hereinabove described in this said paragraph 9 of this Judgment lying in Section 20 Township 12 South, Range 20 East, M.D.B. & M., Madera County.

That plaintiff Marjorie Sims is entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land [3562] hereinafter and in paragraph 9 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

That said plaintiff Marjorie Sims has a prescriptive right to take, divert and pump from said San Joaquin River, and use upon said lands described in Exception 1 of this said paragraph 9 of this judgment of up to 1,025 gallons per minute of the surface waters of said San Joaquin River for beneficial uses and by reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

10. That plaintiff Leslie L. Howard, also known as L. L. Howard and Alma Howard are the owners of the following described land located in the County of Madera, State of California:

In Section 30, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, Lot 12, also all that land lying between the westerly line of said lot and the San Joaquin River; Lots 7 and 9 of Walker Ranch; and that portion of Lot 3 of

Walker Ranch, containing 6.62 acres described as follows:

Beginning at the northeast corner of Lot 7 of said Walker Ranch thence North 200 feet; thence at right angles West and parallel with the North line of said Lot 7, 1504 feet to a point; thence at right angles south to Southerly line of said Lot 3, being the line dividing said Lot 3 from Lot 8 of said tract; thence in a Southeasterly direction along the line dividing said Lot 3 from Lot 8 of said tract to the Northwesterly corner of said Lot 7; thence east along the North line of said Lot 7 to the point of beginning; and all lands contiguous thereto to the center of the San Joaquin River. All above Walker Ranch lots as shown on "Map of Walker Ranch" recorded May 12, 1919, in Book 4, pages 51 and 52 of maps, Madera County Records.

Also right of way over a strip of land 30 feet wide off of and over West side of Lot 5 in Section 30, Township 12 South, Range 20 East, Mount Diablo Base and Meridian, extending from Bluff to the River Northwesterly and Southeasterly through [3563] said Lot 5, along river to San Joaquin River leading to said Lot 12; and all lands contiguous thereto to the center of the San Joaquin River.

That all of said land described in paragraph 10 of this judgment is riparian to said San Joaquin River.

That plaintiffs Leslie L. Howard, also known as L. L. Howard and Alma Howard are entitled to take, divert and pump, now and in the future, all

waters of the San Joaquin River necessary for beneficial uses upon said land hereinafter and in paragraph 10 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

11. That plaintiff Robert C. Arnold, also known as "Red" Arnold is the owner of the following described land located in the County of Madera, State of California:

Parcel No. 1: The SE¼ and the S½ of the NE¼ of Section 33, Township 11 South, Range 20 East, M.D.B. & M., Madera County.

The SW¼, the S½ of the NW¼, the W½ of the SE¼ and the SW¼ of the NE¼ of Section 34, Township 11 South, Range 20 East, M.D.B. & M. and all that portion of the SE¼ of the NE¼ and the E½ of the SE¼ of Section 34, Township 11 South, Range 20 East, M.D.B. & M., and that portion of Lots 1 to 8 both inclusive, of Section 3, Township 12 South, Range 20 East, M.D.B. & M., lying West of the apparent meandering line constituting the eastern boundary of Parcel 26, Fresno Drawing No. 214-204-2290, Exhibit 1 of the Findings.

Parcel No. 2: The N½ of the SW¼ and the SW¼ of SW¼, and Lots 10 and 11 in Section 3; the SE¼ the S½ of NE¼, Lots 1 and 2 in Section 4, all in Township 12 South, Range 20 East, M.D.B. & M., according to United States Government Township Plats.

That the following portion of the above described land in paragraph 11 of this judgment: [3564]

That portion of Lots 1, 2, 3, 6, 7 and 8 of Section 3, Township 12 South, Range 20 East, M.D.B. & M., lying West of the apparent meandering line constituting the eastern boundary of Parcel 26, Fresno Drawing No. 214-204-2290, Exhibit 1 of the Findings; and the N½ of the SW¼ the SW¼ of the SW¼, and Lots 10 and 11 in Section 3, Township 12 South, Range 20 East, M.D.B. & M.,

is riparian to said San Joaquin River and that the said plaintiff, Robert C. Arnold, also known as "Red" Arnold, is entitled to take, divert and pump, now and in the future, by reasonable methods of diversion and use all waters of said San Joaquin River necessary for beneficial uses upon said lands, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined. That the lands of said Robert C. Arnold also known as "Red" Arnold, hereinbefore not found to have riparian rights did not at the time of the commencement of this action have appropriative or prescriptive rights to the San Joaquin River water.

12. That plaintiffs Henry H. Engelman and Emma Engelman are the owners of the following described land located in the County of Fresno, State of California:

Lots 7 and 8 in Section 8, Township 13 South, Range 18 East of Sycamore Ranch Tract, according to the map thereof recorded July 17, 1912, in Book

8 of Records of Surveys at pages 7 and 8, in the office of the County Recorder of said County, except that portion lying north of a slough running across said land.

That all of said land described in paragraph 12 of this judgment is riparian to said San Joaquin River.

That plaintiffs Henry H. Engelman and Emma Engelman are entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinbefore in this said paragraph 12 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial use and reasonable methods of diversion are hereinafter and in this judgment defined.

13. That plaintiff C. A. Hawkins, at the time of the filing of the above entitled action and when he became a named [3565] plaintiff, was the owner of the following described land located in the County of Fresno, State of California:

Lots 33 to 40 inclusive, and 43 to 46 inclusive, 51 to 54 inclusive, and 59 to 62 inclusive, in Section 17, Township 13 South, Range 19 East, M.D.B. & M., consisting of 396.36 acres.

That none of said property is riparian to said San Joaquin River.

14. That plaintiff Holland Land & Development Co. is the owner of the following described land located in the County of Fresno, State of California:

That certain real property located in the County of Fresno, State of California, described as follows:

Lot 13, Section 35, Township 11 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Lots 9 and 10, Section 1, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Lot 11, Section 2, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Lot 10, Section 2, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River; less 2.78 acres in SW corner of Lot 10, Section 2, Township 12 South, Range 20 East, M.D.B. & M.

Lots 7 to 10 inclusive; Portion of Lot 6, lying West of Canal in Section 29, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

That portion of Government Lot 3 and that portion of Lot 299, Perrin Colony No. 2, lying N and W of a line described as: Beginning in North line of Section 32, 1811 feet West from Northeast corner thereof, said point being in center of upper San Joaquin Canal; thence following said line South 35° 30′ West 316 feet; thence South 62° 20′ West 130 feet; thence South 31° 23′ West 165 feet; thence South 74° 29′ West 540 feet; thence South 72° 47′ West 600 feet; thence South 67° 39′ West 400 feet; thence leaving said [3566] Canal North 80° 20′ West 232 feet to Southerly water edge of San Joa-

quin River; Section 32, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2; Lots 269 to 274, lying West of Canal, Section 28, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

Perrin Colony No. 2: Portion of Lots 273, 274 described as: Beginning at a point 1406.8 feet North 0° 04′ East of corner common to Sections 28, 29, 32, 33; thence North 40° 41′ East 621.5 feet; thence North 28° 04′ East 362.5 feet; thence North 51° 17′ West 100 feet; thence North 71° 34′ West 131.75 feet to a point in center line of Old San Joaquin Canal; thence along center of Canal South 15° 06′ West 352 feet; thence South 40° 16′ West 434.5 feet; thence South 0° 04′ West 224.1 feet to point of beginning, Section 28, Township 12 South, Range 20 East, M.D.B. & M.

Perrin Colony No. 2: Lots 285 to 287; portion of Lots 288 to 290, lying West of Canal; Section 29, Township 12 South, Range 20 East, M.D.B. & M.

SE¼ of NE¼, Section 29, and portions west of canal in SW¼ of NW¼, Section 28, NW¼ of SW¼, Section 28, NE¼ of SE¼, Section 29, and SE¼ of SE¼, Section 29, Township 12 South, Range 20 East, M.D.B. & M.

That all of the said land hereinabove described in paragraph 14 of this judgment is riparian to said San Joaquin River except the following portion of the above described land hereinafter and in this

paragraph 14 of this judgment referred to as Exception 1 of paragraph 14 of this judgment:

Exception 1. A. Perrin Colony No. 2: Lots 271 to 274, inclusive, lying west of Canal, Section 28, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

B. Perrin Colony No. 2: Portion of Lots 273, 274 described as: Beginning at a point 1406.8 feet North 0° 04′ East of corner common to Sections 28, 29, 32, 33; thence North 40° 41′ East 621.5 feet; thence North 28° 04′ East [3567] 362.5 feet; thence North 51° 17′ West 100 feet thence North 71° 34′ West 131.75 feet to a point in center line of Old San Joaquin Canal; thence along center of Canal South 15° 06′ West 352 feet; thence South 40° 16′ West 434.5 feet; thence South 0° 04′ West 224.1 feet to point of beginning, Section 28, Township 12 South, Range 20 East, M.D.B. & M.; and all lands contiguous thereto to the center of the San Joaquin River.

C. Perrin Colony No. 2: Lots 285 to 287; Portion of Lots 288 to 290, lying West of Canal; Section 29, Township 12 South, Range 20 East, Mount Diablo Base & Meridian; and all lands contiguous thereto to the center of the San Joaquin River.

D. SE¼ of NE¼, Section 29, and portions west of canal in SW¼ of NW¼, Section 28, NW¼ of SW¼, Section 28, NE¼ of SE¼, Section 29, and SE¼ of SE¼, Section 29, Township 12 South, Range 20 East, M.D.B. & M.

That plaintiff Holland Land & Development Co. is entitled to take, divert and pump, now and in the future, all waters of the San Joaquin River necessary for beneficial uses upon said land hereinafter and in paragraph 14 of this judgment decreed to be riparian, through reasonable methods of diversion, as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined.

15. That plaintiff Jesse Frank Martin is the owner of the following described land located in the County of Madera, State of California:

Parcel I: All of Lot 3, excepting N. 30 acres, Section 8, Township 13 South, Range 18 East, M.D.B. & M., 29.45 acres.

Parcel II: N. 20 acres of Lot 4, less N. 30 feet Co. Rd., Section 8, Township 13 South, Range 18 East, M.D.B. & M., 19.10 acres.

Parcel III: Beginning at a point on W. line of Lot 4 of Section 8 which bears S. 658.53 ft. from NW corner [3568] of Lot 4, thence N. 89° 41′ East 1322.98 feet to point on East line of Lot 4 which bears S. 658.83 feet from NE corner of Lot 4, thence S. 541.17 ft., thence N. 81° 53′ West 555 ft., thence N. 67° 12′ West 505 ft., thence North 51° 19′ West 393.20 ft. to a point on West line of Lot 4, thence along West line of Lot 4 North 14.67 feet to point of beginning, reserving West 30 feet road easement; Section 8, Township 13 South, Range 18 East, M.D.B. & M., 11.16 acres.

Parcel IV: NW¼ of SW¼ (40.09 acres, less West 30 feet Co. Rd.) Section 5, Township 13 South, Range 18 East, M.D.B. & M., 39.19 acres.

Parcel V: S½ of SW¼ of SW¼ (20.40 acres reserving W. & S. 30 feet for public roads) Section 5, Township 13 South, Range 18 East, M.D.B. & M., 19.13 acres.

Parcel VI: SE¼ of NW¼; E½ of E½ of SW¼ of NW¼ (50.57 acres, less S. 20 feet Co. Rd.), Section 5, Township 13 South, Range 18 East, M.D.B. & M., 49.82 acres.

Parcel VII: Lot 1, Section 6, Township 13 South, Range 18 East, M.D.B. & M.

Parcel VIII: SE¼ of SE¼ (77.85 acres less E. 30 ft. Co. Rd.) Section 6, Township 13 South, Range 18 East, M.D.B. & M. 76.95 acres.

Parcel IX: Lot 1, Section 7, Township 13 South, Range 18 East, M.D.B. & M., 24.50 acres.

That Parcels I, II, III, VII and IX of the land hereinbefore and in paragraph 15 of this judgment more particularly described, are riparian to said San Joaquin River but that said plaintiff Jesse Frank Martin is estopped from objecting to or enjoining any of the defendants from storing or diverting any of the waters of said San Joaquin River at Friant Dam; that Parcels IV, V, VI and VIII of the land hereinbefore and in paragraph 15 of this judgment more particularly described, [3569] are not riparian to said San Joaquin River.

16. That plaintiff Carl Harry Johnson is the owner of the following described land located in the County of Madera, State of California:

NW¼ of the NE¼ of Section 6, Township 13

South, Range 18 East, M.D.B. & M., less the north 30 feet for county road, containing 39.13 acres.

All that portion of the E½ of the SW¼ of NE¼ described as: Beginning at a point which bears north 580 feet from the southeast corner of the SW¼ of the NE¼ of Section 6, thence northerly 60° 62½′ west, 707.50 feet, thence north 485.30 feet, thence along the north line of the S½ of the N½ of Section 6, South 89° 58′ east, 660 feet, to the northeast corner of the SW¼ of the NE¼ of Section 6, thence south 740.32 feet to point of beginning. Containing 9.28 acres.

All that portion of the N½ of the NW¼ of Section 6 lying east of the County road to Skaggs Bridge, containing 37.69 acres.

That none of said land is riparian to ~~said~~ San Joaquin River.

17. That all portions of the following described parcels of land (including the lands of the named plaintiffs heretofore and in this judgment more particularly described in paragraphs 1 to 16 inclusive hereof) lying within the dashed line (—) of Exhibit 1 of this judgment, which said dashed line (—) is more particularly described in Exhibit 2 of this judgment, both of which Exhibits 1 and 2 are expressly made a part of this judgment, are riparian to said San Joaquin River and the owners of said lands within said dashed line (—) are entitled to take, divert and pump surface waters of said San Joaquin River and use the same on the lands owned by them within said dashed line (—) of Ex-

hibit 1 of this judgment by reasonable methods of diversion for present and future beneficial uses upon said lands within said dashed line (—), as beneficial uses and reasonable methods of diversion are hereinafter and in this judgment defined. [3570]

That said parcels of land hereinbefore and in this paragraph 17 of this judgment are more particularly described and designated on said Exhibit 1 of this judgment by the following parcel numbers:

3A, 3B, 4, 7, 8, 12, 14, 20, 22, 23, 26, 27, 28, 29, 30, 35, 40, 41A, 41B, 41C, 42, 48, 49, 50A, 50B, 51, 59, 63, 68, 70, 71, 72, 82, 83A, 83B, 87, 88, 97A, 97B, 100, 101, 106, 131, 140, 145, 147, 149, 150, 152, 153, 157, 160, 168, 208B, 208E, and 208F.

37, 39, 44B, 46A, 46B, 55, 58, 60, 62A, 62B, 80, 86A, 86B, 86C, 89, 91, 93, 94, 95, 96, 98A, 98B, 98C, 99A, 99C, 105, 107, 110, 111, 112, 116, 117, 119, 124, 142, 166, 170A, 170B, 174, 180, 184, 196, 208A, 208D, 208G and 213.

18. That all of the riparian, appropriative and prescriptive rights of the owners of said lands mentioned in paragraphs 1 to 17 inclusive of this judgment are superior to any rights of any of the defendants to store or divert waters of said San Joaquin River.

19. That those certain lands located in the Counties of Madera and Fresno, State of California, and designated as the following parcels on Exhibit 1 of this judgment:

118, 121, 134, 135, 137, 138, 141, 143A, 143B, 144, 146, 148, 151, 154A, 154B, 155, 158, 163, 164, 165,

167, 172, 176, 177, 178, 181, 182, 183, 187A, 187B, 190, 191, 192, 197, 198A, 198B, 198C, 199, 204, 206, 207, 209 and 210

are riparian to said San Joaquin River but that said owners are estopped from objecting to the storage and diversion of [3571] the waters of the San Joaquin River at Friant Dam by any of the defendants unless any parcel has prescriptive rights to water of said San Joaquin River.

20. That the owners of those certain lands located in the Counties of Madera and Fresno, State of California, and designated on Exhibit 1 of this said judgment by the following parcel numbers:

1, 2, 5, 6, 9, 10, 11, 13, 15, 16, 17, 18, 19, 21, 24, 25, 31, 32, 33, 34, 36, 38, 43, 44A, 45, 47, 52, 53, 54, 56, 57, 61, 64, 65, 66, 67, 69, 73, 74, 75, 76, 77, 78, 79, 81, 84, 85, 90, 92, 99B, 102A, 102B, 103, 104, 108, 109, 113, 114, 115, 120, 122, 123, 125, 126, 127, 128, 129, 130, 132, 133, 136, 139, 156, 159, 161, 162, 169A, 169B, 171, 173, 175, 179, 185, 186, 188, 189, 193, 194, 195, 200, 201, 202, 203, 205, 208C, 211, 212, 214 and 215

are estopped from objecting to the storage or diversion of water at Friant Dam by the defendants United States of America and defendant bureau officials and employees, except as provided for in contracts between the owners of the parcels of lands set forth in this paragraph 20 and the defendant United States of America. That said owners are

entitled to the amounts of surface waters of the San Joaquin River provided for in contracts between said owners and the defendant United States of America.

21. That all landowners owning lands within the boundaries of Exhibit 3 of this judgment (unless said owners or their predecessors in title or interest by contract or deed have waived their rights as overlying landowners) have the right of an overlying owner similar to a riparian right to pump underground waters underlying any land within the boundaries of Exhibit 3 of this judgment, [3572] as such underground water was supplied and replenished by the full natural flow of the San Joaquin River prior to any impoundment and diversion thereof at Friant Dam unless and until the defendants construct and operate the plan of physical solution hereinafter set forth, for use on [3573] lands upon which wells and pumps for pumping said underground waters are located and to take and use upon said lands said underground waters by reasonable methods of pumping and diversion and for beneficial uses and reasonable methods of diversion as hereinafter and in this judgment defined.

That all of said overlying owners of said landowners within the boundaries of said Exhibit 3 of this judgment (except those who have waived their rights by contract or deed) are prior and superior to any rights of the defendants or any of them to store and/or divert waters of the San Joaquin

River at Friant Dam. That said Exhibit 3 is annexed hereto and expressly made a part of this judgment. Owners taking underground percolating waters from wells not located on their lands have appropriative rights only to such waters.

22. The rights acquired by the United States by purchase, exchange or contract are here declared and decreed as follows:

Those relinquishing their water rights to the United States are herein referred to as the "grantors." In essence, the grantors fall into two groups with relation to the location of their property: The first group consists of a number of riparian owners interspersed along the San Joaquin River between Friant and Mendota; these grantors contractually relinquished their riparian rights to the United States without conveying their lands; the second group, which is emphasized by the defendants as being of greater importance, consists essentially of oppropriators of water and riparian owners downstream from the lands of plaintiffs and by contract they also relinquished to the United States their water rights of whatever character without conveying their lands.

The lands of the first group are more particularly described in paragraph 20 of this judgment and cover 98 contracts which were made beginning in 1944 and continued after the commencement of this action, whereby the owners of riparian [3574] rights upstream from Mendota, severing their

water rights from their land, relinquished those rights to the United States without transferring their land. Included in this group are the Edison Securities contract, and the Madera Irrigation District contract only insofar as its riparian rights are concerned, as well as other contracts concerning those riparian lands which had so-called Miller and Lux Reservations.

The second group involves land owners or appropriators mostly at or downstream from Mendota, although some involved diversions at and between Gravelly Ford and Mendota. As to the plaintiffs and their class, the same principles of law apply whether the diversion was below Gravelly Ford or Mendota. The two principal contracts in this group are the so-called Miller and Lux Purchase contract and the Miller and Lux Exchange contract.

These two contracts were dated July 27, 1939. The contracts were between the United States and Miller & Lux, Inc. and the Gravelly-Ford Canal Company, Inc., but were consented to by the Canal Companies controlled by Miller and Lux, namely, the San Joaquin and Kings River Canal & Irrigation Company, Inc., the San Luis Canal Company, the Firebaugh Canal Company, and the Columbia Canal Company, all of whom may be regarded as grantors. Under the Purchase contract, in substance, the United States agreed to pay the sum of $2,450,000 for the right, as against the grantors and as against the lands of the grantors specifically de-

scribed, to divert, store, and use by means of Friant dam "all the waters of the San Joaquin river measured at Whitehouse gauging station, as they would flow in the absence of operations by the United States, in excess of the aggregate 24-hour mean flows in cubic feet per second as specified in the schedules [3575] set out in the contract, which ranged from a minimum of a release of 400 second-feet in January, to a maximum of 2,475 second-feet during July of each year. Under the exchange contract, in substance, the grantors agreed that when, and only when, the United States supplied substitute water below Whitehouse gauging station at Mendota pool in the quantity equal to that set forth in the schedules above referred to in the Purchase contract, the United States could store and divert the waters of the San Joaquin river at Friant, insofar as the grantors only were concerned. The substitute waters were to be furnished from the Sacramento river by way of what is now the Delta-Mendota canal. Miller and Lux retained their riparian and appropriative rights to San Joaquin water in the amount set forth in said schedules, which is in excess of 1,000,000 acre-feet per year. These contracts together provide in substance that in exchange for the waters of the San Joaquin river formerly used or purveyed by the grantors, the United States paid approximately $2,500,000 under the Purchase contract and agreed, by the Exchange contract, to furnish water to the grantors, from the Sacramento river by way of what is now the Delta-

Mendota canal, to empty into the Mendota pool to supply the uses for water to the lands formerly served by all of the Canal Companies which theretofore took water from the San Joaquin river either above Mendota or at Mendota; that is to say, the San Joaquin river waters which the grantors had the right to take, either above or below Mendota, and to use below Mendota, were to be exchanged at Mendota for Sacramento river waters.

The delineation of California law leads immediately to the conclusion that, by these contracts of the first group for the transfer to the United States of the riparian rights, the United States acquired no rights against the plaintiffs [3576] and their class, who possess riparian, overlying appropriative and prescriptive rights to the full natural flow of the San Joaquin river, if needed. The United States acquired only a right to invoke the doctrine of estoppel against the lands and their owners covered by those contracts. It did not by those contracts acquire the right, as against plaintiffs and their class, to impound and divert any water at Friant.

As to those owners owning rights to water downstream from plaintiffs, and who, as grantors, contracted with the United States, such grantors had no riparian rights superior to plaintiffs and their class, and acquired no appropriative or prescriptive rights of appropriation against plaintiffs and their class as upstream owners of vested water rights, by the downstream use or appropriation of water. At

the time of the contracts with the United States, downstream users, whether riparian or appropriative, and howsoever acquired, had only rights inferior to the plaintiffs and their class. The downstream users who were grantors to the United States could not have changed the point of diversion to Friant to the detriment of the intervening vested rights of the plaintiffs, as has occurred to the named plaintiffs and the class they represent.

The users downstream from the plaintiffs did not create in the United States, by the contractual relinquishment of their rights to the United States, any higher right than they themselves possessed and could exercise.

The United States, by the Purchase and Exchange contracts, and the other contracts with downstream holders of water rights in the second group acquired no right to divert and impound water at Friant Dam superior to the plaintiffs and their class as owners of vested rights between Friant and Mendota. [3577]

23. The court declares and decrees that the use of the following amounts of water originating from the San Joaquin River for (1) consumptive use, (2) crop irrigation requirements and (3) farm delivery requirements, within the boundaries of the lands set forth and described in Exhibit 3 hereof (excepting therefrom the lands within Tranquillity Irrigation District), is a beneficial use of the water of said San Joaquin River by surface diversion or

by pumping underground percolating waters from wells lying within the boundaries of Exhibit 3 of this judgment:

Crop	Consumptive use	Effective Precipitation	Crop Irrigation requirement	Farm Delivery requirement	Irrigation efficiency %
	Acre feet per acre				
Alfalfa	3.42	0.38	3.04	4.05	75
Irrigated pasture	3.75	0.38	3.37	5.20	65
Cotton	2.38	0.38	2.00	2.85	70
Irrigated hay and grain	1.22	0.38	0.84	1.10	75
Truck	2.30	0.38	1.92	2.85	65
Misc. field crops	1.60	0.38	1.22	1.75	70
Deciduous fruit	2.38	0.38	2.00	2.65	75
Citrus & Olives	2.11	0.38	1.73	2.30	75
Grapes	2.53	0.38	2.15	3.10	70
Rice				6.00(58) to 7.1 (59)	

Pre-irrigation by the application of water to land prior to planting is a beneficial use for these crops in addition to the amounts set forth herein.

The court declares and decrees that the use of the following amounts of water for (1) consumptive use, (2) crop irrigation requirements and (3) farm delivery requirements, within the boundaries of Tranquillity Irrigation District, either by surface diversion of water from Fresno Slough (whether originating from the San Joaquin River or elsewhere) or by pumping underground percolating waters from wells lying within the boundaries of Tranquillity Irrigation [3578] District is a beneficial use of water:

Crop	Consumptive use	Effective Precipitation	Crop Irrigation requirement	Farm Delivery requirement (a)	Irrigation efficiency %
	Acre feet per acre				
Alfalfa	2.8	0.2	2.6	3.3	80
Irrigated pasture	3.7	0.2	3.5	4.4	80
Cotton (b)	2.4	0	2.4	3.0	80
Irrigated hay and grain (b)	1.2	0.2	1.0	1.25	80
Misc. field crops and truck	2.0	0	2.0	2.5	80
Rice	5.0	0	5.0	7.1	70
Sugar Beets	2.4	0	2.4	3.0	80

(a) To these values should be added transmission losses in canal system amounting to at least 15 per cent.

(b) Pre-irrigation by the application of water to land prior to planting is a beneficial use for this crop in addition to the amounts set forth herein.

The court further finds that the "effective precipitation" and "irrigation efficiency %" on the lands within the boundaries set forth and described in Exhibit 3 of this judgment and within the boundaries of Tranquillity Irrigation District are as above set forth.

That the terms used in the headings of the above tabulation have the following meanings:

Consumptive use is the sum of the volumes of water used by vegetative growth of a given area in transpiration or building of plant tissues, and that evaporated from the adjacent soil. These quantities are considered part of consumptive use regardless of whether the source is from irrigation or rainfall. The sum is normally expressed as acre-inches or acre-feet per acre per year.

Effective precipitation is that part of the total seasonal precipitation which contributes toward the consumptive use of a crop. Part of the effective portion is used by plant transpiration during the winter season, the remainder is stored in the root zone for subsequent use by plants. The portion of precipitation which is considered ineffective is lost by percolation below the root [3579] zone, or is evaporated from the soil surface during the period of no crop growth.

Crop irrigation requirement is that portion of the consumptive use that must be supplied by irrigation, i.e., the consumptive use minus effective precipitation.

Irrigation efficiency, which is expressed in percentage, is a measure of that portion of irrigation water delivered to the farm headgate which is utilized as crop irrigation requirement.

Farm delivery requirement is that quantity of water, delivered to the farm headgate, which is required to bring a crop to maturity. It includes crop irrigation requirement and economically unavoidable losses due to application.

That any use of water by humans for drinking, bathing, household, household garden uses and for evaporative and refrigerated air conditioning and other domestic uses and for manufacturing and other municipal uses, up to an annual average of 339 gallons per person per day, and the use of water without unnecessary waste for drinking or bathing by poultry, cattle and other animals is a beneficial use of either the surface waters of the San Joaquin River or of the underground percolating waters

within the boundaries of Exhibit 3 of this judgment and within Tranquillity Irrigation District.

That in extremely dry years, or years of little rainfall, or due to the loose, porous, sandy or gravel conditions, all of some portions of said land lying within the boundaries described in Exhibit 3 of this judgment, or within the boundaries of Tranquillity Irrigation District, the use of water for irrigation, domestic, municipal and agricultural uses in excess of the amounts heretofore found to be a beneficial use in this judgment, may also constitute a beneficial use of the waters of said San Joaquin River or of the underground percolating waters within [3580] the boundaries of said District and within the boundaries of Exhibit 3 of this judgment. The court's jurisdiction to change amounts of beneficial use in special cases is retained.

24. That the named plaintiffs owning lands mentioned in paragraphs 1 to 16 of this judgment (with the exception of the named plaintiff mentioned in paragraph 15) and other named plaintiffs adequately represent as a class those other landowners (not parties to this suit) owning lands with overlying percolating water rights within the boundaries set forth and described in Exhibit 3 of this judgment, adequately represent those other landowners (not parties to this suit) owning lands riparian to said San Joaquin River lying within the dashed line (———) of Exhibit 1 of this judgment, and adequately represent those other landowners (not parties to this suit) in this judgment found to have prescriptive and/or appropriative rights in and to the surface waters of said San Joaquin River and

that all of said beforementioned named plaintiffs are prosecuting this said action to enforce a common right to water from a common source of supply, i.e., the San Joaquin River for and on behalf of all members of their respective classes.

That the within action is a class action within the meaning of Rule 23(a)(1) of the Federal Rules of Civil Procedure.

25. That plaintiffs who have filed actions under the Tucker Act, 28 U.S.C.A. 1347, 1402, 1491, et sec. are not barred from receiving injunctive and other equitable relief by this court in this action.

26. That the court has jurisdiction of the State of California on the basis of its original intervention, but that no relief for or against the State is required or is possible under the pleadings and issues, which show an actual litigable controversy only among the parties other than the State; that in accordance with the State's request a judgment of dismissal of the State of California's Complaint in Intervention and of the State as defendant in intervention is hereby entered under the City of Fresno Complaint in Intervention and under the complaint in [3581] intervention of Tranquillity Irrigation District, as amended and supplemented.

27. That the court has jurisdiction of the United States of America under the act of July 10, 1952 (43 U.S.C.A. paragraph 666); that the United States is a necessary, but not an indispensible party to this said action including the complaints in intervention of the City of Fresno and Tranquillity Irrigation District; that neither the secretary of the Interior nor the Chief of the Bureau of Rec-

lamation are indispensable parties to this said action or under said complaints in intervention of the City of Fresno and Tranquillity Irrigation District; that the court has jurisdiction over Clyde Spencer, Supervising Engineer, California Projects, U. S. Bureau of Reclamation, Regional Director of the U. S. Bureau of Reclamation, Region 2; Martin Blote, Watermaster, U. S. Bureau of Reclamation and Superintendent of Operations of the Central Valley Project, U. S. Bureau of Reclamation, and Edwin F. Sullivan, Operations Supervisor, U. S. Bureau of Reclamation, and over their agents, attorneys and employees.

28. That none of the rights of plaintiffs or of the class they represent, nor of the complainants in intervention in and to the waters of the San Joaquin River are barred by prescription, laches or estoppel of said complainants in intervention, nor by the intervention of a public use in favor of any defendant or cross-complainant.

29. That Tranquillity Irrigation District and its landowners, by virtue of riparian, prescriptive, or constractual rights are entitled to 12% in excess of 1360 second feet of the natural flow of the San Joaquin River measured at Whitehouse, for use on lands with said district, computed as follows:

(a) Said 12% over 1360 second feet at White House hereinabove and in this judgment mentioned, is based [3582] upon the adjusted flow of the San Joaquin River at Friant, which is the flow which would have occurred if there had been no storage back of Friant Dam and no storage behind any other

dams upstream from Friant Dam on said river or any tributary thereof.

(b) The adjusted river flow for any day at Friant shall be computed by first adding the evaporation from the lake surface, the release to the San Joaquin River, the release to the Friant-Madera Canal and the release to the Friant-Kern Canal and adding to said sum the increase in storage at Millerton Lake or subtracting from said sum the decrease in storage at Millerton Lake, all expressed in cubic feet per second, the result representing inflow into Millerton Lake. To this inflow should be added the increase in storage of Kerckhoff Reservoir of the Pacific Gas & Electric Company and in all existing or future upstream reservoirs of Southern California Edison Co. and on said San Joaquin River and its tributaries and from this should be deducted the decrease in storage in Kerckhoff Reservoir and of said existing and future upstream reservoirs of Southern California Edison Co. on said San Joaquin River or any of its tributaries, all expressed in cubic feet per second. This shall constitute the adjusted river flow at (below) Friant Dam.

(c) The computed daily natural inflow into Mendota Pool measured at Whitehouse in excess of 1360 cubic feet per second shall then be obtained by subtracting from the adjusted flow at Friant the intervening canal and ditch diversions from the San Joaquin River which would have been made by Gravelly Ford Canal, [3583] Aliso Canal, Edison Securities Co., Chowchilla Canal, Columbia Canal and Lone Willow grass rights if these diversions were being made. There shall also be subtracted "River Loss

and Riparian Diversions" as determined by subtracting from the measured actual flow released at Friant, the measured actual flow at White House for the day being considered corrected for delay in river flow referred to in paragraph 4 of this judgment.

The schedule for determining the above listed intervening canal and ditch diversions during each month of the year shall be that contained on pages 26 to 37 inclusive of Report No. 3 of the State of California "Definitions of Rights to the Waters of San Joaquin River Proposed for Diversion to Upper San Joaquin Valley dated August, 1936", which said pages 26 to 37 inclusive of Report No. 3 are set forth as Exhibit 5 of this judgment and expressly made a part thereof.

(d) 12% of the flow into Mendota Pool as computed above in excess of 1360 cubic feet per second shall then be taken as the amount which Tranquillity Irrigation District and its landowners shall be entitled to divert from Fresno Slough. The date of availability of this water shall be two days later than the date of adjusted river flow at Friant as hereinabove mentioned in order to correct for delay in river flow between Friant and Mendota Pool.

(e) On days between October 1st and April 15th, when the natural flow of the San Joaquin River measured at White House, as herein computed, is less than 1500 cubic feet per second and between April 16th and September 30th when the natural flow of said river is [3584] less than 3000 cubic feet per second measured at Whitehouse and Southern California Edison Co. with the consent of Miller &

Lux, Inc., or with the consent of the United States of America, if such right to consent has been assigned to it by said Miller & Lux, Inc., is storing water of Stevenson Creek in Shaver Lake, or at any time when the natural flow of the San Joaquin River measured at White House is less than 3000 cubic feet per second and Southern California Edison Co. with the consent of Miller & Lux, Inc., or the United States of America, if such right to consent has been assigned to it, is storing any of the water of said river or tributary thereof in any reservoir on said San Joaquin River or its tributaries, Tranquillity Irrigation District shall be entitled to pump 100 cubic feet per second from Fresno Slough or 12% in excess of 1360 cubic feet per second of the natural flow of the San Joaquin River measured at Whitehouse as said natural flow is in this judgment hereinbefore computed, whichever is the greater.

(f) No deductions from said 12% of said flow of said river above 1360 second feet as herein determined shall be made on account of any flow of the Kings River whether measured at points on Fresno Slough or any other place.

(g) The right of Tranquillity Irrigation District to said 12% of 1360 second feet of the natural flow of said river as herein above computed shall not be limited by present or future pumping capacity of the Tranquillity Irrigation District from Fresno Slough but shall only be limited by the requirement that said 12% of said waters of said river be used now and in the [3585] future for beneficial uses and purposes within said district and by reasonable

methods of diversion as beneficial use and reasonable methods of diversion hereinbefore and in these findings are defined.

(h) As a physical solution defendants may substitute water from the Delta Mendota Canal of equal quality to the natural flow of the San Joaquin River for the natural flow of said San Joaquin River and Tranquillity Irrigation District shall have the option to pump an equal amount of waters originated from the Delta Mendota Canal from Fresno Slough in lieu of the natural flow of said San Joaquin River.

That Tranquillity Irrigation District, in addition to said right to 12% in excess of 1360 second feet of the natural flow of the San Joaquin River measured at Whitehouse, are entitled to, as a matter of prior right, at the cost of not more than class one water as sold under the Central Valley Plan for irrigation use, in addition to said 12% in excess of said 1360 second feet of the natural flow of said San Joaquin River measured at Whitehouse, and in addition to its percolating water rights to purchase all additional water reasonably required to supply its reasonable and beneficial needs before the defendants or any of them are entitled to take any water of the San Joaquin River out of the watershed or county of origin by way of the Friant-Kern Canal, which said right to purchase class one water shall be computed as follows:

When it appears, at the time of the estimate of each year's supply from the San Joaquin and from Kings river, that the total sum of water which will be supplied by the 12% in excess of 1360 second feet

of the San Joaquin (measured at Whitehouse) added to the sum which is estimated to be supplied [3586] by the Kings River, added to the sum which is estimated to be supplied by the wells of Tranquillity, is not sufficient to meet the reasonable demands for crops of the crop pattern of the preceding year, on the basis of the needs for each crop as shown by paragraph 23 hereof, then Tranquillity will be entitled to have the defendants enjoined and restrained from taking, by way of the Friant-Kern Canal, out of the watershed and county of origin, that amount of water which, in addition to the three sources of water above-described, would be required to satisfy the above-described needs for such crops, unless and until the defendants make available to Tranquillity for the current year substitute water, by way of the Delta-Mendota Canal or otherwise, of the same quality as its present water supply, and at a rate not to exceed that then currently charged for Class I water for irrigation from Millerton Lake.

30. That the plaintiffs and members of their class are entitled to the decree of physical solution hereinafter provided in paragraph 32 of this judgment to protect their riparian, overlying, appropriative and prescriptive rights to the use of surface and underground waters of the San Joaquin River within the boundaries of Exhibit 3 of this judgment.

That the City of Fresno is entitled to a declaratory judgment that it is also entitled to purchase an additional supply of surface water to supplement its present and future water requirements in excess

of 30,000 acre feet annually from the San Joaquin River for its domestic and municipal purposes from the defendant United States of America to be delivered at Friant Dam or out of the Friant-Kern Canal within Fresno County, at rates now or to be charged in the future for Central Valley Project class one water, before any water is diverted out of the watershed of the San Joaquin River, out of Madera or Fresno County, the counties and areas of origin of the waters of the said San Joaquin River, by means of said Friant-Kern Canal.

Said City of Fresno will be entitled to injunctive relief as against the United States of America and the other [3587] defendants to enforce this said right to surface water of said San Joaquin River as here declared and decreed by appropriate decree under the provision of Section 2202 of Title 28, U. S. Code whenever it has constructed the necessary diversion works to bring said water to the City.

31. The City of Fresno has no vested right enforceable under its complaint in intervention in this said action at the present time as regards its applications to appropriate waters of the San Joaquin River, which applications are as follows:

Applications filed by the City of Fresno

6771— 8/20/1930
6772— 8/20/1930
7134—12/ 5/1931
7135—12/ 5/1931

nor to enjoin the hearings before the State Engineer of the State of California (now State Water Rights Board) until a permit is granted by said State Engineer of the State of California (now State Water Rights Board) and the injunction pendente lite issued in the Ancillary proceedings brought by the City of Fresno and Tranquillity Irrigation District against the State Engineer and others, is hereby dissolved and said ancillary action of the City of Fresno against Edmonston, et al., dismissed.

The City of Fresno, however, is entitled to a declaratory judgment, as herein set forth in the following paragraph of this judgment:

This court declares and decrees that the filing of said applications 5637, 5638 and application 9639 by the Department of Finance of the State of California and their assignment to the United States and the amendment of such applications, which amendments to said applications have been filed with the United States, did not and does not vest in the United States any right to appropriate any water at Friant [3588] Dam; that the right to appropriate any water under the laws of the State of California depends on compliance with the statutes of the State of California and the granting of a permit; that there has been no compliance with the statutes and no permits have been issued to the United States on said applications to appropriate at Friant; that even upon compliance with the statutory procedure and the obtaining of permits to appropriate, only surplus waters can be appropriated and any permits which may be granted by the State Engineer of the

State of California (now State Water Rights Board) are subject to the provisions of section 11460, and 11463 and the provisions of the California Water Code on the priority of municipal and domestic use (whether contained in the permit or not) irrespective of whether a permit to appropriate the surplus waters of the San Joaquin River is granted to either the United States of America or the City of Fresno or any other applicant.

That changing the point of diversion from points downstream from Friant to Friant by defendants United States and its said defendant agents, officials and employees has and will continue to irreparably injure plaintiffs and their class unless the following Plan of Physical Solution, set forth in paragraph 32 of this judgment, is immediately constructed and placed in operation and continued in operation by said defendants. [3589]

32. That the defendant United States of America, its officers, agents, attorneys and employees, including the defendant Spencer, Blote and Sullivan, and their successors in office and employment, are forever enjoined from storing or diverting the natural flow of said San Joaquin River at or by means of Friant Dam; provided, however, that if said defendant United States and/or said defendant irrigation and water districts, at their sole cost and expense, within a reasonable time, construct, place in operation, maintain and operate the following physical solution, then such injunction shall not go into effect.

Such physical solution shall consist of a series of ten ponds in the natural channel of the San Joaquin

River between Friant Dam and Mendota Pool to be created by construction of ten check dams with collapsible gates, said dams to be approximately locationed as follows:

Check Dam No. 1: Left abutment bearing South 14° 0′ West from NE corner (projected NE corner), Section 35, Township 11 South, Range 20 East, M.D.B.&M., a distance of 2,480 feet.

Check Dam No. 2: Left abutment bearing North 50° 0′ East from SW corner, Section 2, Township 12, South, Range 20 East, M.D.B.&M., a distance of 2,750 feet.

Check Dam No. 3: Left abutment bearing South 42° 30′ West from NE corner, Section 21, Township 12 South, Range 20 East, M.D.B.&M., a distance of 710 feet.

Check Dam No. 4: Left abutment bearing North 54° 30′ West from SE corner, Section 29, Township 12 South, Range 20 East, M.D.B.&M., a distance of 3,670 feet.

Check Dam No. 5: Left abutment bearing South 3° 0′ East from NW corner, Section 30, Township 12 South, Range 20 East, M.D.B.&.M., a distance of 2,600 feet. [3590]

Check Dam No. 7: Right abutment bearing South 53° 45′ West from NE corner, Section 32 North, Township 12 South, Range 19 East, M.D.B.&M., a distance of 3,440 feet.

Check Dam No. 9: Left abutment bearing North 16° 35′ East from SW corner, Section 3, Township 13 South, Range 18 East, M.D.B.&M., a distance of 1,820 feet.

Check Dam No. 10: Right abutment bearing South 64° 15′ West from NE corner, Section 8, Township 13 South, Range 18 East, M.D.B.&M., a distance of 5,300 feet.

Check Dam No. 11: Left abutment bearing North 79° 31′ West from SE corner of Section 2, Township 13 South, Range 17 East, M.D.B.&M., a distance of 1,860 feet.

Check Dam No. 12: Left abutment bearing North 28° 30′ East from SW corner, Section 9, Township 13 South, Range 17 East, M.D.B.&M., a distance of 960 feet.

Said dams shall be capable respectively of maintaining water levels in the San Joaquin River when gates are raised at the following minimum depths above existing natural stream bed at the dam, and of ponding the water in the San Joaquin River to at least the following distances upstream from said dams:

Check Dam	Minimum Depth of Water at Dam Feet	Minimum Distance Ponded Upstream Miles
1	3.0	1.3
2	3.6	1.2
3	3.5	2.3
4	6.0	2.0
5	6.0	2.0
7	9.0	3.0
9	7.0	3.6
10	5.5	2.7
11	5.0	2.6
12	5.5	3.1

Capacity of overflow section of all dams with gates raised shall be 750 second feet. Capacity of overflow section with gates of overflow section down shall be 2,000 second feet minimum. When all gates are down, said dams shall be capable of passing all future flood releases from Friant Dam and scouring releases from Friant Dam of 2,000 to 4,000 second feet with full scouring coverage of the entire bed and banks of ponded areas in the natural bed of the San Joaquin River.

All check dams shall be designed and constructed with treated wooden collapsible gates, concrete deck and abutments, foundation type, and operating equipment including traveling Gantry Cranes to raise and lower said collapsible dams of the type shown on Exhibit 4 of these findings.

In "Typical Upstream Elevation" as shown on Exhibit 4 of these findings, the abutment at the left bank of the river at Check Dams 1, 2, 3, 4, 7, 9, 10 and 11, and at right bank at Check Dams 5 and 12, shall be built in steps so as to permit laying of rails to support Gantry Crane when being taken out of service.

Steel frame Gantry Cranes shall be provided for raising and lowering all collapsible gates. Crane to have sufficient clearance between its tracks and top of gates and walls and tops of abutment steps adjacent to non-overflow section of dams, or to abutment on which Gantry is to be stationed [3592] during flood flows. (Gantry Crane to be stationed at left abutment at Check Dams 1, 2, 3, 4, 7, 9, 10 and 11 and right abutment at Check Dams 5 and 12.)

Rails shall be extended on incline from deck of dam to top of abutments mentioned above.

To provide flexibility, the reinforced concrete deck for all dams is to be laid in panels of appropriate width, with joints running up and downstream.

Gantry Cranes are to be self-propelling with gasoline engine power unit of the general type shown on Exhibit 4. They are to be supported on wheels which will run on 40 pound rails. Rails to be placed on concrete deck of each dam and abutment as directed above. Gantry Cranes of the general type shown on Exhibit 4 of these findings shall be individually designed for Dams 5, 7, 9, 10, 11 and 12, and for Dams 1 to 4 inclusive. Wider collapsible gates and the raising of the same by hydraulic jacks controlled from the bank, provided they perform the same functions as the Gantry Cranes and gates herein and in this finding set forth and described, may be substituted for the Gantry Cranes and gates herein and in this finding described.

The water depths of said release at all points along the river from Friant Dam to Check Dam No. 12, and including all appurtenances, shall be capable of safely passing flood discharges expected to occur in the future in the San Joaquin River below Friant Dam.

Said collapsible gates of all dams shall be kept raised at all times during the year to ponding position and sufficient water released from Friant Dam at all times during the year to pond the water back of all dams to the distances [3593] hereinbefore set

forth in this finding, with a constant minimum flow of five (5) second feet flowing over the last dam downstream from Friant Dam (i.e., Check Dam No. 12) except during (1) flood flows, (2) scouring releases or (3) when releases for any other purposes are to be made in excess of 750 second feet, with right of defendants to construct dams or Gantry Cranes of more permanent, elaborate or costly types, provided such dams or cranes perform the same functions as the dams of type shown on Exhibit 4 of these findings, and that the substituted dams will safely pass, when raised, the minimum amounts hereinbefore in this finding set forth, will safely pass all flood discharges, and which will allow passage of the scouring releases in this finding mentioned to cover the entire bed and banks of ponds.

Location of said check dams may be constructed short distances downstream if defendants so desire, provided that the depth of ponded water at the herein designated location for each of said check dams and the minimum ponded distance upstream from said locations herein given, remain approximately the same.

In the event the river bottom has degraded at the location of any dam since the survey of the profile of the river shown on Exhibit 4 of these findings it shall be the duty of the defendants to erect the dam to sufficient height so as to pond the water to a depth hereinabove mentioned at the damsite equal to what the water would have been ponded had the

river bottom not degraded since the time of the survey shown on Exhibit 4 of these findings.

Exhibit 4 consists of two pages of photo offset reproductions which are expressly made a part of these findings. [3594]

The gates to said dams shall be lowered by defendant United States of America and defendant Bureau officials and employees and flushing or scouring releases of at least 4,000 second feet for up to twenty-four hours for each flushing shall be released by defendant United States of America and defendant Bureau officials and employees from Friant Dam in June and August of each year and an additional twenty-four hour flushing release of at least 2,000 second feet on April 1st of years of subnormal run-off as determined by the Bureau of Reclamation's spring estimates in order to keep the river bottom and banks free of accumulated silt, fines, algae and organic seal and force additional waters into the underground. Whenever said river bottom and banks are free of or are freed from said accumulated silt, fines, algae and organic seal, said minimum flushing releases may be stopped.

All costs of constructing, repairing, replacing and operating said collapsible dams and appurtenances including easement and rights of way, and furnishing of water for said ponds shall be borne by the defendant United States of America and defendant Districts.

33. That in addition to the five second feet of water herein decreed to pass over the last dam in said plan of physical solution provided for in para-

graph 31 of this judgment, defendant United States of America, its officers, agents, attorneys and employees, including defendant Spencer, Blote and Sullivan and their successors in office and employment, are forever enjoined from storing or diverting the natural flow of said San Joaquin River at Friant Dam so as to in any way diminish or interfere with the said 12% of the excess of 1360 second feet of the natural flow of the San Joaquin River [3595] measured at White House as computed in paragraph 29 of this judgment, provided, that said injunction mentioned in said paragraph 33 shall not go into effect if said defendants, as a part of the physical solution by this said court, substitute an equal amount of the waters, of equal quality, originating from the Delta-Mendota Canal for that portion of the natural flow of said San Joaquin River to which said Tranquillity Irrigation District and its landowners are decreed to be entitled to under paragraph 29 of this judgment and, provided further, that as a part of said additional physical solution, Tranquillity Irrigation District and its landowners may and are allowed by said defendants United States and its officers, agents and employees above named to pump an equal amount of waters originating from the Delta-Mendota Canal from Fresno Slough in lieu of said natural flow of said San Joaquin River measured at White House.

34. That the named plaintiffs are entitled to a contribution from other members of the class which they represent for attorneys' fees, engineers' fees and other expenses they have incurred in the course of prosecuting this action.

That plaintiffs and cross-defendants are entitled to recover their costs of suit from all defendants except defendant United States of America.

35. Upon proper showing, and after due notice, the injunctive provisions in this judgment contained, may be modified by the court under its continuing jurisdiction.

Dated: January 18, 1957.

/s/ PEIRSON M. HALL,
District Judge. [3596]

Affidavit of Service by Mail Attached.

[Note:

Exhibit 1—"Map of Water Right Investigations" is the same as Defendants' Exhibit A9A-1 except for the crayon markings, set out in the Book of Exhibits.

Exhibit 2—"Description of Certain Lands Riparian to the San Joaquin River" is the same as Exhibit 2 attached to the Amended Judgment.

Exhibit 3—"Legal Description—Topographic Boundary of Alluvial Cone and Minimum Area Within Which Ground-Water Presently or Potentially is Influenced by Flow of San Joaquin River" is the same as Exhibit 3 attached to the Amended Judgment.

Exhibit 4—(Page 1) "Profile of San Joaquin River, Friant to White House Gaging Station Showing Check Dams Constituting the Physical Solution by Court in its Opinion of February 7, 1956 and Supplemental Opinion of July 11, 1956" and (Page 2) "Typical Collapsible Check Dams,

Types I, II & III, San Joaquin River Between Friant Dam and Mendota Pool" September, 1956, is the same as Exhibit 4 attached to Amended Judgment.

Exhibit 5—"Table 3—Monthly Flow Schedule Allowance of Each Crop and Grass Land Water Right as Related to the Adjusted Flow of San Joaquin River at Friant in Second-Feet" is the same as attached to Amended Judgment.]

[Endorsed]: Filed January 18, 1957.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain judgment which was docketed and entered herein on the 22nd day of January, 1957, as against the United States of America.

Dated this 11th day of March, 1957.

UNITED STATES OF AMERICA,
/s/ J. LEE RANKIN,
Solicitor General,
/s/ WILLIAM H. VEEDER,
Attorney, Department of Justice,
Attorneys for Appellant.

[Endorsed]: Filed March 12, 1957.